

March 14, 1990 Draft Background Report on TIC Issue

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**CONVERSION OF RENTAL UNITS TO OWNER-OCCUPANCY THROUGH SHARED OWNERSHIP:  
DATA, ISSUES AND POLICY RECOMMENDATIONS ON THE TENANCY-IN-COMMON ISSUE**

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**PART I. RECOMMENDATIONS**

**First**, that the City pass an ordinance requiring the TIC disclosure statement in the appendix be given to all potential buyers. This model statement was developed by a group of realtors in consultation with City staff.

**Second**, that the Planning Commission investigate the general problem of preservation of affordable housing opportunities for both low-income renters and moderate/middle-income homeowners and exploring the possibilities for reconciling conflicts between these two goals. This review should be added to the Planning & Community Development Department work program for the coming fiscal year, beginning July 1, 1990. In order to discourage a rush to empty apartments, the City should make an immediate declaration of policy that conversion to owner-occupancy which may result from this review will not be permitted where owners have invoked the Ellis Act and evicted tenants to go out of the rental business.

The review should include an examination of the potential for a mitigation program which would reconcile homeownership opportunities with the preservation of housing affordable to low-income residents. It should include an examination of the possibility of allowing condominium conversion, as well as TICs, with full mitigation of any loss of affordability. It should include examination of provisions to sell units at a discount to current tenants, with corresponding reduction in the sellers mitigation requirement as long as long-term affordability is maintained in discounted units.

**Third**, that the Planning Commission review the two main points of view concerning TICs and decide whether or not to propose one-year interim restrictions on conversion of units in buildings with five or more units while the new subcommittee engages in its broader review. The purpose of such a moratorium would be to prevent TICs from expanding into broader reaches of the rental housing stock, without substantially impairing the existing TIC market in two to four unit buildings.



## PART II: SUMMARY AND POLICY IMPLICATIONS

Two of the City of Berkeley's major housing goals are currently in conflict -- preservation of rental housing affordable to low-income people and providing opportunities for middle-income homeownership. The problem for the City is to determine the extent of this conflict and what means are available to reconcile these two goals. The City's housing element calls for efforts to expand homeownership and the Rent Stabilization and Eviction for Good Cause Ordinance provides that owners with at least a 50 percent interest may evict tenants for the purpose of owner-occupancy. However, to the extent that conversion of rentals to owner-occupancy reduces the stock of housing affordable to low-income residents this runs contrary to another major housing goal.

Bay Area Economics' 1989 survey of Berkeley households indicates that about 16 percent of 1980 rental housing, about 4,500 units, are now owner-occupied, with 80 percent of this change occurring in single-family houses and duplexes. During the same period the city added about 700 units of rental housing through new construction. In 1980 single family and duplex units made up 29 percent of the total rental housing stock, but nearly half of this has now been converted to owner-occupancy and they now represent about 19 percent of the city's rental housing. About 48 percent of Berkeley households are now owner-occupants, up from 38 percent in 1980. (The city's population of 106,000 also includes about 11,000 residents of group quarters, mostly student housing, who are not in households.)

This shift results primarily from the increased price of single-family housing in the Bay Area, which increases the return to investor-owners if they sell to owner-occupants. Rent control strengthens this effect by reducing the return from rents, but it should be pointed out that the relaxation of rent controls on these units to allow substantially higher rents would also make them less affordable. Affordability, rather than rental or ownership status as such, is the key policy problem for the City in these conversions.

So far the conversions have been concentrated among the least affordable rentals, since single family and duplex rents are substantially higher than for other rental units. Owner-occupants in these buildings will normally have at least a 50 percent ownership interest.

With the pool of single-family and duplex rentals seriously reduced, however, there will likely be increased pressure for conversion of units in larger buildings where more affordable units are concentrated. The primary vehicle for this type of conversion is shared ownership, usually through tenancy-in-common (TIC), where owner-occupants hold less than a 50 percent interest in the building. TICs have been used in properties ranging in size from two to nine units and a related effort to create a Tenancy in Partnership is under way in an 18 unit building. During the 1980s as many as 1,000 units, and 15 percent of units in three and four unit buildings, converted to TIC owner-occupancy. There is reason to believe that TIC conversion will grow in the coming years.



Proponents of TICs argue that they create virtually the only form of homeownership in Berkeley that is affordable to middle- and to a lesser extent low-income people. Opponents argue that TICs withdraw units from rent control and reduce the stock of housing affordable to lower-income people.

Berkeley does not permit subdivision of rental property by conversion to condominiums, stock cooperatives or community apartments, which create individual units that can be separately bought and sold, because this would lead to a loss of rental units to owner-occupancy. With tenancy in common, people can share ownership of a property with multiple units and agree among themselves to allow each part owner to occupy one unit, creating an alternative form of conversion of rental units to owner-occupancy. About 600 units in buildings with three or more units have been converted from rental to owner-occupancy using TIC ownership. The City has the power to restrict this type of conversion where buyers would have less than 50 percent ownership of the property.

Along with the affordable housing issue, TICs also raise a consumer protection issue. Buyers in common interest subdivisions are protected by extensive disclosure requirements established by State law. These include a statement that developers or converters must show new buyers which explains how this type of common ownership differs from traditional single-family homeownership. No such statement is required of TIC sellers, even though the TIC is similar and in some ways more complex.

Even a complete ban on TIC owner-occupancy in 4+ unit buildings leaves the potential for a substantial reduction in the rental housing stock, especially since owner-occupancy of more than one unit is also possible. Thus replacement of lost units seems an unavoidable concern.



### PART III. REGIONAL CONTEXT

The regional situation can be divided into two parts - the situation for middle-income would-be homeowners and for low-income tenants - and how each affect and are affected by the housing situation in Berkeley.

**The demand for homeownership**, particularly ownership of single-family detached homes is extremely strong in the Bay Area. It is driven by a strong regional economy. In addition, changes in the occupational structure have expanded the higher and lower income jobs faster than middle income jobs and the high-end expansion fuels demand for luxury homes in good locations. The supply of detached homes has expanded more rapidly than any other part of the Bay Area housing market, but still at a relatively restricted pace which does not keep up with demand. In addition, much of the increased supply is in outlying areas such as East Contra Costa County. This puts a premium on housing in central locations such as Berkeley. As new employment centers emerge in Walnut Creek and Concord, along with the traditional centers of San Francisco, Oakland, Berkeley and Emeryville, Berkeley's central location becomes all the more desirable.

As a result, purchase of a home in Berkeley, as in much of the Bay Area, is largely restricted to a much more well-to-do class of people than it once was. The resale value of single-family detached houses in Berkeley increased by 142% from 1980 to 1988, reaching an average value of \$250,000 in the sample tracked by the Real Estate Research Council of Northern California. This is affordable to families with an income of over \$65,000 a year with \$55,000 saved for a downpayment and closing costs. The following year average values increased another \$50,000 before finally leveling off. (Small houses in poor repair and in less desirable locations are available in the \$100-150,000 range, as are a few condominium apartments.)

This is a structural condition and will not change unless there is a major economic decline in the San Francisco-Oakland area or a major decline in quality of life in the Bay Area in comparison with other areas. There is no possibility that enough detached housing can be built in the intensely used central areas to reduce current prices and prices are much more likely to continue to increase. The result is that would-be homeowners must either compromise on location, and move to outlying areas or gentrify poor areas they would normally avoid, or compromise on building structure and settle for attached housing, apartments and shared ownership of various sorts. There are also increasing numbers of middle and upper-income people who in fact prefer a relatively urban setting, particularly one with the cultural amenities of Berkeley.

While demand for condominium townhouses and apartments is smaller than for traditional detached homes, there is no likelihood that enough such housing could be produced in Berkeley to satisfy the demand. This is not to say that Berkeley's contribution to meeting its designated "fair share" of regional housing need is not needed by the region as a whole, even if Berkeley meets its goals it will not so dampen demand to eliminate interest in TICs. **Middle to upper income pressure on Berkeley's affordable housing stock will be continuous for the foreseeable future and the proportion of middle income homebuyers in Berkeley will continue to decline unless new forms of ownership housing are made available.**



Housing affordable to lower income tenants is in short supply in the Bay Area. Low-income jobs are increasing, and the low-income population is increasing. Except in certain outlying areas such as Eastern Contra Costa County and Solano County, where land values remain low, virtually no new market-rate housing is built that is affordable to low-income people. Since low-income is defined as up to 80% of median, this is about 37% of Bay Area and East Bay households. In the East Bay virtually all rental housing that is built is luxury housing, serving middle income households newly shut out of homeownership.

In the Bay Area as a whole, rents and home prices both nearly doubled between 1980 and 1988. Rents in Berkeley increased at about the same 50% rate as inflation. In Berkeley the median controlled rent for a two-bedroom apartment is around \$440. By way of comparison, the median advertised rent for a two-bedroom apartment in the Oakland area is \$605, and less than 10% of advertised rentals are under \$490. In southern Alameda County and central Contra Costa County the median advertised rent is about \$625, with the low-end at \$525 in Contra Costa and \$580 in South County. Berkeley is one of the few areas in which there are apartments which are affordable even to very low-income people that are in desirable neighborhoods in central locations with decent schools and low or average crime rates.

If the rest of the region was producing low-income housing, or had declining neighborhoods to match those which were gentrifying, then the question of loss of affordable rental housing in Berkeley would be a local issue - whether Berkeley wishes to preserve the current level of economic diversity as best it can. Unfortunately, the rest of the Bay Area has been losing low-income housing faster than it builds or sets aside replacements.

In addition, each unit of new low-income housing is expensive. The nearly \$60,000 difference between the value of a unit as a TIC and as a controlled rental is effectively the buy-down cost of taking market rate units and converting them to low-income units. The buy-down cost of making newly constructed units affordable to very low-income people is similar. As a rough estimate then, with half of Berkeley rental units occupied by very-low income households conversion of 100 units to TICs would require at least 50 replacement units at a subsidy cost of \$6,000,000. The loss of rent-controlled units to TIC owner-occupancy is more than twice the number of all the subsidized units built in Berkeley during the 1980s.

One can reasonably question the fairness of extracting this subsidy cost as forgone profits by owners of rental property in Berkeley rather than having it paid by all middle and upper income residents of the Bay Area. The fact remains, however, that Berkeley has used its rent stabilization program to shelter approximately 8,000 very low-income non-student households who no longer have much available to them in the way of alternatives if this pool of low-income housing is converted to owner-occupancy.



#### PART IV. CONVERSION OF RENTAL UNITS TO OWNER-OCCUPANCY, 1980-89

##### A. Total Units Converted from Rental to Owner-Occupancy

In November 1989 Bay Area Economics carried out a mail survey of Berkeley households. The survey had a 40 percent response rate with 1,860 valid responses and results are generally accurate within a range of plus or minus three percent city-wide. Staff has compared the survey results a number of other sources to check for bias, particularly with 1980 Census data on type and location of housing units and it appears to be remarkably accurate. Some small corrections are described in the text.

As shown in the table below, the 1980 Census reported that Berkeley households were 38 percent owners and 62 percent tenants. The BAE survey results suggest that owner-occupancy is now around 48 percent and rentals around 52 percent. Allowing for the increase in total number of units in Berkeley, these figures indicate the conversion of about 4,500 rental units to owner-occupancy during the 1980s, about 16 percent of 1980 rental housing.

	<u>1980 Occupied Units</u>		<u>1988 Occupied Units</u>	
	Percent	Number	Percent	Number
Rent	62%	27,821	52%	23,600
Own	38%	16,883	48%	21,700
Total	100%	44,704	100%	45,300

Note: The BAE survey and City estimates of the number of housing units are not directly comparable to the 1980 Census figures and required some corrections which are incorporated into the above table. First, the Census reported 1,300 more units than the Berkeley "Housing Stock Changes Report" from that period, primarily because the Census included SRO rooms as units while the City did not. I have corrected the total number of units reported by the most recent "Housing Stock Changes Report" (which incorporates new construction) to add 1,000 units (reflecting the additional units counted by the Census but also the loss of several hundred SRO units during the 1980s) and then subtracted a 3.3 percent vacancy rate of 500 units based on the California Department of Finance estimates. This estimated 1988 unit count should be on a reasonably equivalent basis to that of the 1980 Census.

Second, the BAE survey underestimates the percentage of rental units because the Census included Single Room Occupancy units while the BAE survey did not. Failure to include SRO units inherently misses only renters. And the survey was done by mail, which tends to undercount less educated people who are less likely to fill out a mail survey and more likely to be tenants. Comparison of the survey results with Census data on number of units in the building suggest about a two percent under-response from apartment units. Comparison of the percentage of units which came from the Certified Rents database of rent controlled units among respondents and non-respondents suggests that the actual percentage of renters is between one and two percent higher than found in the BAE survey. Addition of the SRO units adds another percent. For these reasons I have corrected the BAE survey results upward for tenant households and downwards for owner households by a conservative estimate of two percent.



## B. Types of Buildings Converted

We can also use the BAE survey data to look at the characteristics of these conversions, looking specifically at those units converted to owner-occupancy during 1980-1989. We must keep in mind that we are dealing with less than ten percent of the total sample, so the range of potential error is on the order of plus or minus ten percent, rather than the plus or minus three percent for the survey as a whole. The results of this analysis must be taken as suggestive, not definitive.

Table: Changes in Rental Units by Units in Building

Units in Building	Total Units	Rental Units 1980	Percent 1980 Rentals	1980-89 Conversions	Estimated Rental Units 1990	Percent Rentals Converted
One	20,800	4,700	17%	2,400	2,300	51%
Two	5,000	3,200	12	1,200	2,000	38%
3-4	5,500	4,800	17	700	4,100	15%
5+	14,500	14,900	54	200	15,400	1%
All	45,800	27,600	100%	4,500	23,800	16%

Units in Building	Estimated Percent of All Conversions
One	53%
Two	27
3-4	15
5+	5
All	100%

Source: Bay Area Economics 1989 Household Survey

Note: The Census total in this table is slightly lower than the city-wide rental total stated earlier because of missing data. A major source of potential error is the definition of a one unit building. The figure for one unit buildings reported by the Census adds together single-family attached and detached, while BAE survey respondents may have treated attached units as part of a larger structure. Thus the rate of conversion of single-family detached may be understated and the extent of conversion in larger buildings overstated.

The majority of 1980-89 conversions reported were in single-family houses, and eighty percent in one or two unit buildings. The estimates suggest that over half of single-family rentals and nearly two-fifths of duplex rentals that existed in 1980 are now owner-occupied. Since a community like Berkeley often has temporary rentals, as people spend one or more years elsewhere and then return, the permanent rental housing stock among one and two-unit buildings is even lower than these figures indicate. This type of housing is apparently being removed from the rental market.



So far the conversions have been concentrated among the least affordable rentals. Single family and duplex rents are substantially higher than for other rental units. The median 1989 controlled rent for a three bedroom house is \$768, \$200 a month higher than the median controlled rent for a three bedroom apartment of \$567. Many owner-occupied duplexes are exempt from rent control and charge full market rents.

The total number of units converted in two or more unit buildings, based on these figures, would be 2,100, substantially higher than the estimate in the next section of 1,000 TIC conversions during the 1980s. This is partly because the BAE survey picks up other forms of owner-occupancy in 2+ unit buildings, such as owners who live in otherwise rental buildings and families with joint tenancy, and partly the result of error in one or the other estimate.

The distribution of units in buildings with two or more units can be compared with the distribution of TIC units reported in my memo of November 30, 1989. The BAE household survey shows more conversions in two unit buildings and a smaller proportion of 3-4 unit buildings. This disparity could be explained by a greater use of other forms of ownership in two unit buildings, and by the TIC properties which contain multiple buildings. The BAE survey and the Census would count units by building rather than by parcel.

### C. Owner Characteristics and Prices

Of the owners reporting that the unit was formerly a rental, 25 percent report that they bought the unit they once rented and 75 percent that other renters had lived there. This suggests that about 1,100 units have been bought by their tenants during the 1980s out of 4,500 removed from the rental market.

Nearly 60 percent of the owners of units converted from rental to owner-occupancy previously lived in Berkeley. Of those owners who replaced other renters, 45% previously lived in Berkeley, 20% in Oakland, 30% in other parts of the Bay Area and 5% outside the Bay Area.

The median income of tenant buyers is currently \$42,000 a year, while the median income of buyers who replaced other tenants is \$49,000. These are not the incomes of these households at the time of purchase. Purchase prices are also moderately lower for tenant buyers than for buyers who replace tenants.

Table: Cost Characteristics of Converted Units

	Median Price	Range (25-75%ile)	Med. Monthly Mortgage Pmt.	Range (25-75%ile)
Owners Are the Previous Tenants	\$115,000	\$75-150,000	\$740	\$570-\$1100
Owners Replaced Previous Tenants	\$138,000	\$110-190,000	\$1,000	\$700-\$1300



## PART V: OWNER-OCCUPANCY THROUGH TENANCY IN COMMON

### A. What is tenancy in common?

Tenancy in common exists when two or more persons own "undivided interests" in a single property, except when the ownership documents specify that ownership is held through one of three alternative forms of shared ownership. Tenancy in common is the normal form by which people share ownership of real estate because it is the only form which allows the part-owners to freely sell their interests and for their heirs to inherit. Every kind of privately owned real estate in Berkeley is sometimes owned by tenants in common - commercial and industrial buildings, vacant land, single family houses, large apartment buildings and everything in between. Tenancy in common is a typical means for unmarried couples to share ownership of a single family house and for investors to share ownership of rental property of all kinds, as well as for people to share in ownership of the homes they live in. Tenancy in common is an issue only inasmuch as it has become a vehicle for the conversion of rental units to owner-occupancy.

The alternative forms of ownership are joint tenancy, community property, and tenancy in partnership. Community property exists only between husband and wife and interests cannot be sold separately, but can be inherited by multiple heirs. When inherited by anyone other than the surviving spouse the interest changes form and becomes a tenancy in common. Joint tenancy is rarely used outside of family relationships because when one owner dies, their interest reverts automatically to the surviving joint tenant(s). When sold, an interest held in joint tenancy changes to tenancy in common.

Tenancy in partnership is designed to maintain a business as a going concern. It makes all property transactions subject to the agreement of all partners and each partner is liable for all partnership debts. This form of ownership is not usually desirable to people who are not part of a business. Nonetheless, the owner of 2 Panoramic Way is trying to sell this building with 18 apartments to owner-occupants in the form of 18 shares in a real estate partnership. Again, tenancy in partnership is only an issue as it may provide a vehicle for conversion of rental units to owner-occupancy.

### B. How many units are occupied by tenants in common owners?

I estimate that there are in the range of 1,000 - 1,250 owner-occupied TIC units in about 550 buildings. At least 10% and as many as 25% were owner-occupied in 1980, so there were around 1,000 TIC conversions in the 1980s.

This estimate is based on several data-gathering efforts to locate TIC owner-occupants. First, Data Processing ran a listing of all properties whose owners took multiple homeowners' property tax exemptions in 1986, the most recent year available. Second, staff searched the property transfer records for all residential transfers to tenants in common during 1987 and 1988 and sampled records from 1985 to estimate how many TIC owner-occupants took the homeowners exemption (about 1/3). Third, Rent Stabilization Program staff generated a list of 1989 applications for owner-occupancy, rent-free, and vacant unit exemptions. Finally, staff searched the Rent Stabilization Program files for all TIC owned properties to check for owner-occupancy exemptions from rent control currently and in 1980.



This effort yielded a list of 372 buildings with 1,160 units, of which 690 are definitely and 880 are probably occupied by an owner or by a family member of an owner. Correcting for the undercount for 1986 and before, and making a small additional allowance for units missed by the other search methods gives a corrected total of in the range of 1,000 - 1,250 owner-occupied TIC units in about 550 buildings. At least 10 percent were already owner-occupied in 1980 based on Rent Program records, and since many owner-occupied duplexes are exempt from Rent Stabilization and have no records this figure may be as high as 25 percent.

TIC owner-occupancy is concentrated in 2-4 unit properties, many of them separate buildings on lots which are too small to be legally subdivided. The largest property found with a majority of TIC owner-occupants was 9 units. Of 38 TIC-owned properties with 5 or more units, only 13 contained a majority of owner-occupants. In the largest TIC-owned buildings, with over 20 units, there are two owner-occupants who show no evidence of any intention to sell off further shares of the building, and may serve as resident managers. Some of the other 5+ unit buildings are probably in the process of selling to owner-occupants as tenants move out. A number of units, often smaller and less desirable, remain as rentals within the TIC-owned properties.

Table: Tenancy in Common Distribution

Units in Property	TIC Buildings	TIC Units	Estimated Owner-Occupied TIC Units
2 Units	50%	40%	480
3 Units	20	20	240
4 Units	20	30	360
5+ Units	10	10	120
All	100%	100%	1,200

Conversion can be very profitable. Examination of recently listed TIC sales showed they had an average 1989 registered rent of \$447 per month, just slightly above average. With a gross rent multiple of 10 this yields an average per unit value of \$54,000 compared to an average TIC sales price of \$112,000, a \$58,000 increase. The average rent is affordable to a household making \$17,900 annually, while the \$930 monthly mortgage payment for the TIC is affordable to a household making \$33,500 a year (See Appendix).

TICs are located throughout the city, but with concentrations on the South and North sides of Campus (See map in Appendix). Advertised TIC units are generally small, about 55% have one bedroom, 40% have two bedrooms and 5% have three bedrooms. Advertisements for TIC owner-occupancies mostly list prices in a range between \$75,000 and \$175,000. This is affordable to households with incomes ranging from \$25,000 to \$50,000. For one to three person households these prices are affordable to middle or moderate income buyers with incomes ranging from 81% to 125% of median.



C. What is the trend of TIC owner-occupancy?

TIC owner-occupancy existed to a limited extent prior to rent control, primarily as a form of shared ownership of 2-4 unit properties. Fully owner-occupied separate cottages and duplexes and shared ownership of three and four unit buildings, often combined with renting out one or two units, were all common. The owner-occupied TIC has grown steadily but slowly since 1980. The apparent explosion in the number of TICs reflects, at least in part, the identification as a separate market of something which had always been around. The current rate of conversion is around 150 units a year.

TIC owner-occupants have shown themselves most interested in properties that come the closest to the traditional single-family detached home - detached cottages on lots too small to subdivide under current zoning, duplexes, triplexes and up to four-plexes. TIC owner-occupancy is also more likely in smaller properties because the owner-occupied TIC creates tremendous complications in obtaining mortgage financing, keeping a cooperative relationship and working out mutual responsibilities. This gets increasingly difficult as the number of parties increases, especially since the TIC lacks the formal structure created by a legal subdivision. These smaller properties are nearly one quarter of Berkeley's housing stock, however.

Table: Berkeley's Housing Stock

<u>Structure</u>	<u>Number of Units</u>	
1 unit	20,809	
2 unit	5,024	
3 unit	1,836	
4 unit	3,616	
(2-4 units	10,476)	(Note: This figure for 2-4 unit structures
5-9 units	4,665	does not include cases where 2-4
10+ units	8,294	separate units are on one parcel of land.)
<u>Mixed use</u>	<u>1,524</u>	
Total units	45,768	

At present TIC owners occupy about 10% of the units in 2-4 unit buildings. The unanswered question is whether the pool of people interested in such arrangements is reaching saturation and will soon level off, or whether it is likely to continue to grow until much of the 2-4 unit rental housing is converted to owner-occupancy and even encroach substantially on rental units in larger buildings.

There is some reason to believe that the pace of TIC conversion has increased substantially in the last three years. A network of real estate investors, agents, lawyers and lending institutions now exists that have experience with creation of TICs. They have developed sources of financing, have detailed standard agreements for use among buyers, and have actively publicized the TIC option to owners, encouraging them to leave units vacant when tenants move out and offering the benefits of their experience in persuading tenants to leave in order to clear buildings for TIC sales.



In addition, with the intense demand for owner-occupied housing in this area, as is evidenced by the high prices of single-family houses, and the diminished pool of one and two-unit rentals that remain available for conversion, pressure to create TICs in larger buildings is likely to grow substantially.

#### VI. HOW CAN TICs BE REGULATED?

Tenancy in common combined with agreements on occupancy of specific units is very similar to the form of common interest subdivision known as "community apartments". In community apartments part ownership of the property includes in the property description a right to occupancy of a particular unit, while in tenancies in common the occupancy of each unit is the subject of a separate agreement among the owners. In *Adler v. Elphick* the California Court of Appeal held that because of this difference a TIC was not a community apartment project and did not constitute an illegal subdivision.

A September 20, 1989 opinion by Thomas B. Brown, Deputy City Attorney, holds that the city has the power to regulate "changes in form of ownership" and to apply subdivision or zoning ordinances or the municipal code to TICs. The opinion argues that cities are not pre-empted from regulating matters not explicitly covered by the Subdivision Map Act and thus may regulate TICs even though they are not a form of common interest subdivision.

TICs are an issue at least two other cities, San Francisco and Santa Monica. In San Francisco TICs serve as a means to avoid that City's numerical limit on condominium conversions and are particularly attractive because the City allows eviction for owner-occupancy with as little as 10% ownership, compared with Berkeley's 50% requirement. The Mayor's Housing Advisory Committee made two recommendations on TICs - compensation for displaced lower-income tenants and assistance for tenant purchase - but no formal action or program has yet been proposed.

TICs have become an issue in Santa Monica and there the City has amended its municipal code relating to subdivision requirements to include TICs by creating the category of "Cooperative Apartment. Pursuant to the City's authority to regulate subdivisions not regulated by the Subdivision Map Act as authorized by Government Code Section 66411, a project of more than three units in which an undivided interest in land is coupled with the right of occupancy of any apartment located thereon, whether such right is contained in the form of a written or oral agreement, when such right does not appear on the face of the deed." The City has not yet established implementing regulations.

Current City of Berkeley ordinances prevent subdivision into condominiums, stock cooperatives and community apartments, but Rent Stabilization Program regulations place no limit on owners allowing family or friends to occupy units rent-free or on who owners may rent to. The TIC is as much an extension of this, with a group of owners allowing themselves rent-free occupancy, as it is an unofficial common interest subdivision. In addition, City ordinances explicitly permit 50% owners to evict for owner-occupancy, and the voters rejected an effort to require 51% ownership. This directly sanctions two-owner-occupant TICs.



To regulate larger TICs, the City needs the power to regulate occupancy by more than two owner-occupants in properties with three or more units. It appears that the City does have the means and the ability to do this. The Santa Monica approach is one possibility, but may run into ambiguity in the meaning of right of occupancy. An alternative approach is to regulated owner-occupancy by people with less than 50 percent interests.

The City can require a permit from the Board of Adjustments for owner-occupancy of units not exempt from the rent stabilization ordinance where the owner-occupant holds less than a 50% interest in the property. It can set an annual limit on the number of permits issued and set fees sufficient to cover the costs of the regulatory process and any mitigations. It can exempt properties with a certain number of units from the permit requirement and it can exclude properties with a certain number of units from the possibility of obtaining a permit.

In order to ensure that all buyers are made aware of the permit requirement, the City can require that all buyers of undivided interests, tenancies in common and partnership interests sign a form stating that they know of this requirement. The City can require that this form be filed with property records when the transaction is recorded. The City can notify title insurance companies of this requirement and, as with the City's RECO requirement, ensure that it is complied with in most cases. This process will create a slight inconvenience to purchasers of property as tenants in common for other reasons than owner-occupancy.

No licensed real estate agent could assist in the creation of such owner-occupancies without endangering their license and no mortgage lender would lend on the basis of owner-occupancy without a permit. There are some possibilities for evasion, but they are small and the notice requirement ensures that no unwitting buyers will be penalized by enforcement of the regulations.

This procedure goes directly to the issue of loss of controlled rental units to owner-occupancy, avoids the problems of defining a covered TIC and prevents use of partnerships in place of TICs. It also avoids reliance on defining TICs as a form of subdivision. The direct regulation of owner-occupancy in this manner is new, but the City Attorney's Office feels that, pending closer analysis, it should be legally defensible.



## PART VII. SHOULD TICS BE REGULATED: DISCUSSION AND PUBLIC COMMENT

The TIC Subcommittee met and heard public comment on the TIC issue on January 3rd and 16th, 1990. The following is a summary of the main points raised by both members of the subcommittee and the public.

There was unanimous agreement that existing TICs should be exempt from any future regulatory restrictions that might be passed. The idea of "grand-fathering in" existing TICs was supported by speakers on both sides of the issue and the all members of the subcommittee supported the idea.

The Subcommittee also agreed to recommend that the Planning Commission establish a new subcommittee to review the broader issue of reconciling preservation of low-income rental housing and preserving opportunities for middle-income homeownership. Even the most complete practical TIC owner-occupancy, covering 4+ unit buildings, leaves the potential for a substantial reduction in the rental housing stock from conversion of 1-3 unit properties, especially since owner-occupancy of more than one unit also seems to be spreading. A very open examination of possible new housing policies seems called for.

### Problems Raised, Suggested City Actions and Objections to Such Actions

**Problem 1:** Conversion to owner-occupancy reduces the supply of affordable rental housing and the economic and racial diversity of the city.

Members of the audience stated that creation of middle income homeownership also contributed the diversity of Berkeley and that the creation of small groups who shared ownership was a positive part of Berkeley's culture.

Several speakers argued that many tenants have high incomes and low rent burdens and can afford to move elsewhere. Berkeley's rent-controlled tenants do have lower rent burdens than tenants in neighboring cities, where the majority of tenants pay over 30 percent of income for rent. Even so, one-third of Berkeley's non-student tenant households, and the majority of those with very low-incomes, pay over 30 percent of their income for rent.

According to the Bay Area Economics 1988 tenant survey, about 10% of tenants in rent controlled units are above moderate income and 20% are moderate income (80-120% of median), while about 20% are low-income (50-80% of median) and 50% are very low-income (50% of median or below). Berkeley has about 5,400 rent burdened low-income non-student households in rent controlled units. Relocated to uncontrolled units, the proportion of rent burdened households would be substantially higher.

Members of the audience suggested that TICs are a limited part of the total loss of rental units in Berkeley, including vacant units and owners occupying more than one unit, and that if ways could be found to bring vacant units back onto the market (more financial incentives for owners of rental property was raised by several speakers) this might return as many or more units as were lost through TICs. Members of the audience suggested that restrictions on TICs would create even more risky forms of owner occupancy and that single households with high enough incomes would buy entire 2-4



unit parcels for owner-occupancy. While the regulatory method proposed would also prevent forms of owner-occupancy such as tenancy in partnership, it would not affect use of entire multi-unit buildings by single owners.

Suggested City Actions:

1a) Prohibit conversion in properties with three/four/five or more units or set an annual numerical limit on creation of such TICs.

Members of the public suggested that efforts to evade the prohibition create serious new problems, such as unrecorded property transactions and agreements, a rush to convert and higher prices for the existing TICs that would remain. A rush to convert before new regulation took effect is a real possibility, as are higher prices if the supply is limited. Mr. Gardiner said that while he opposed regulation, if there was to be regulation he preferred the flexibility of an annual limit to a ban on particular types of TIC.

1b) Require TIC sellers and/or buyers to replace lower income units or otherwise mitigate their loss.

Construction of new housing is clearly not a practical possibility, but there may be other ways to supply replacement units, such as dedication of existing units to low-income occupancy. The subcommittee did not want costs to be passed on to new buyers, who are among the lowest income new homebuyers. Rather any such costs would have to be placed on the seller and come out of the increase in value that sale to owner-occupants creates over the existing value as a rental unit subject to rent control. This can be done, but the costs of mitigation might discourage some owners from converting, thus reducing the supply of TICs and raising prices, unless the mitigation program was also designed to increase the availability of units for sale.

The profits involved in creation of TICs are substantial, typically selling prices are more than double the value of the property as a rental, so there is the possibility of substantial resources for mitigation (see letter from Jon Petrie in appendix). A mitigation requirement could reconcile the goals of preservation of low-income housing and expansion of opportunities for homeownership, but an effective mitigation system would have to be worked out and this has not yet been done.

1c) Allow more housing to be built and pressure the University of California to build more housing.

The subcommittee pointed out that the City has done both of these, but there is no realistic hope either that enough new condominium housing could be built to satisfy the demand for ownership housing, or that enough new apartments could be built at low enough rents to replace the affordable rental units converted through TIC ownership.

1d) Give landlords more financial incentive to remain in rental business.

This would not preserve affordability and it is doubtful that the return from even uncontrolled rents would surpass the profits from sale to owner-occupants in most cases.



**Problem 2:** Tenants are displaced, evicted, misled and coerced to buy or move.

The Rent Board received 40 owner-occupancy eviction notices during a three month period in 1989 (July-September), of which 6-10 involved 50% owners or their family members taking possession of a unit or units, mostly in 4 unit properties. This suggests about 25-30 notices annually from TIC owners. Most of these cases do not go through to court hearings and it seems likely that most tenants in buildings changing to TIC owner-occupancy do not undergo a formal eviction process, since it is usually preferable for both sides to settle out of court. Owners with less than 50 percent interests can not use the legal eviction process since they do not have the right to evict for owner-occupancy.

Owners can, under the Ellis Bill, go out of the rental business and evict all tenants. There is at least one such case currently in process, a part of Normandy Village with eight units. Members of the audience argued that many TICs did not displace anyone because the units were vacant for some period of time prior to owner-occupancy.

The extent of harassment is impossible to determine. Some cases which tenants have considered harassment have been reported to the Rent Board (see tenant letters in appendix). Members of the audience suggested that most units were vacated by the owner not re-renting when tenants leave or by owners paying tenants to leave and that actual harassment was rare because it is illegal under Berkeley's rent stabilization ordinance (see letters from Michael St. John in appendix). The subcommittee noted that changes in the eviction laws would require a ballot measure since they were set by an initiative.

#### Suggested City Actions:

##### 2a. Compensation for Displaced Tenants

Tenants displaced under the Ellis Act, by owners who formally go out of the rental business are entitled by City ordinance to \$4,500 compensatory payment. The City may wish to review the adequacy of this amount. Evictions for owner-occupancy by 50 percent owners do not require compensatory payment and this cannot be changed without an initiative.

##### 2b. Right of first refusal.

The subcommittee asked staff to review previous work on creating a right of first refusal for current tenants, the effects such a right would have on the price of units sold and the possibility of price discounts for current tenants. Discussions with current TIC converters suggest that owners already have a substantial financial incentive to sell to current tenants, even at somewhat of a discount, rather than try to out-wait, buy-out or persuade a current tenant to leave. I do not presently see clear benefits to such an ordinance. A fund to assist tenant-buyers who have adequate incomes but insufficient savings for a downpayment would likely be useful if funds were available.



2c. Exempt vacant units from regulation.

A member of the public suggested that units vacant over a period of time be treated differently than units with tenants in place at the time the TIC was created if the City passes restrictions on TICs.

This suggestion has the problem of is determining the time at which the TIC conversion started and the owners motivation in leaving units vacant, given that owners may warehouse units for months and even years before there are enough vacancies to form a TIC. Perhaps some consideration should be given to a one-time exemption for units that were registered with the Rent Program as vacant for some period, such as two or three years, prior to enactment of a regulatory ordinance.

2d. Restrict formation of TICs.

The remaining regulatory responses to tenant displacement are the same as for loss of affordable rental units and have the same arguments for and against.

**Problem 3:** Buyers don't understand the difficulties they may get into in a TIC purchase. Difficulties include financing, especially for parcels with five or more units, refinancing, inability to rent out for enough to make mortgage payments during temporary absences, financial interdependence of owners, difficulty in sustaining cooperation among co-owners and unexpected costs.

Numerous problems have arisen with TIC sales in which owners did not fully understand what they were buying. A TIC owner who believed they were exempt from the City's rent control ordinance during periods of absence from home is now in a difficult dispute with their tenants. A TIC owner whose documents did not specify the proportional shares each party would receive from appreciation of the building is in a bitter dispute with their co-owners. Ms. Pinkston said she knew of a TIC in which when one owner had to sell all the owners were forced to sell.

In general, two to four unit TICs are able to obtain relatively conventional homeowners mortgage financing. Loans which are transferable to new owners are also available from at least two lenders. The main limitation is that sales of units whose prices have increased will require refinancing the entire loan and co-owners must agree on the division of any increased costs this causes. One lender has a loan package which allows two increases in loan amount (two sales of units) before refinancing is required.

TICs with five or more units generally involve bank financing based on the rent controlled value of the building and the seller taking back a mortgage for the difference. This clearly makes it more difficult for buyers to resell unless they themselves are prepared to take back a mortgage on at least part of the price when they sell.



Several members of the audience argued that financing was available and this was not a problem. Another member of the audience suggested that the difficulty of financing such units helped keep the price down and make them more affordable. Others asked that the City work to make financing easier to obtain and facilitate creation of more TICs. Another pointed out that larger numbers of owners had some advantages because it diminished the risk that a financial default by one owner posed to other owners.

**Suggested City Action:**

**3a. Pass a Disclosure Requirement**

Mr. Gardiner expressed concern over whether a disclosure requirement was needed. One owner raised the concern that a disclosure statement designed to scare off buyers would lower TIC values. Ms. Pinkston said that her concern was to present accurate material designed to ensure buyers were aware of the issues involved in a TIC purchase.

There was general agreement among real estate industry people I have spoken to that a standard disclosure statement is needed and a group of realtors has drafted a model disclosure statement in consultation with City staff. (See attached disclosure statement.) According to the City Attorney passage of a disclosure requirement will not create any liability on the part of the City, although they will need to review the actual text of the ordinance and the required statement.

**3b. Require filing of disclosure statements with the City.**

A member of the audience asked that disclosure be accompanied by filing with the City so that accurate information could be obtained on the numbers of TICs being created.

A disclosure requirement is effectively self-enforcing because failure to provide the disclosure creates liability on the part of the seller and any licensed real estate agent who is involved in the sale. The purpose of tracking TICs could better be handled by the Rent Program, which could create a TIC category for owners with under 50 percent interests who occupy units and thus are exempt from the annual fee.

**Problem 4:** TICs are marketed in a discriminatory fashion to restricted groups such as students and their parents or UC faculty and do not seem to reach minorities.

The subcommittee felt that TICs were broadly marketed through normal real estate channels and that this was not a problem inherent in TICs. The City has existing programs to enforce non-discriminatory housing requirements.

Claimed Benefits of TICs and Objections to Allowing TICs

**Benefit 1:** TICs make homeownership affordable and increase the range of choices open to Berkeley renters.

Several TIC owner-occupants and would-be buyers testified that TICs were the only form of ownership housing they could afford in Berkeley.

Members of the public argued that conversion to Limited Equity Cooperatives is allowed and LEC owners get the tax advantages of homeownership but not the appreciation that is profitable but reduces affordability. Others responded that given the difficulty of creating LECs this is not a real alternative and that in any case buyers do not want equity appreciation to be limited.

**Benefit 2:** TICs create a financial incentive for better maintenance and seismic safety upgrading.

**Benefit 3:** TICs let people stop being landlords and to sell profitably.

**Benefit 4:** TICs increase property values and increase tax revenues.

**Benefit 5:** TICs allow people who can't find a rental to live in Berkeley.

Several members of the public and Ms. Pinkston argued that since all of the claimed benefits apply even more strongly to condominium conversion, and 2-5 apply to abolition of rent control, the voters have indicated that they prefer the benefits of preservation of affordable rental housing. TICs, in this view, are a loophole in the law and violate current City policy.

Mr. Gardiner argued in response that TICs are a useful compromise because they are an awkward form of ownership attractive only to people who want very much to live in Berkeley and also unlikely to appreciate as fast as if they were condominiums so remaining relatively affordable as homeownership.



## PART VIII. REGULATORY ALTERNATIVES

### 1. Do nothing.

While TIC conversion appears to be accelerating it is still a relatively small phenomenon affecting less than one percent of Berkeley's rental housing stock annually. There is time to study and discuss the broader issues of affordable rental housing and affordable homeownership before moving to regulate TICs.

### 2. Restrict creation of further TICs.

While 100 units a year of housing affordable to low-income people is a small percentage of Berkeley's housing stock, it would cost the City around ten million dollars to replace them with new or rehabilitated housing. The City is losing low-income housing faster than it is producing it and cannot afford to wait.

#### 2a. Regulatory Limits on TICs

The city can not restrict either 2 unit TICs or owner-occupancy by two owners in 3+ unit buildings when owners of 50% interests have the right to evict for owner-occupancy under Berkeley's rent control ordinance. In many three-unit parcels where one unit is often smaller and thus not considered suitable for owner-occupancy anyway. These units will either remain rented or be absorbed, with or without permits, into the two owner-occupied units. Two and three unit TICs are also where the "organic" shared ownership by family and friends usually takes place. I suggest that any regulations restricting TIC conversions apply only to properties of at least four units.

2b. Should conversion be banned or should there be an annual limit, and if so what should that limit be?

Since there would still a great deal of scope for creation of TICs in two and three unit buildings, an effective restriction on TICs would have to be either a total ban in buildings or else a relatively small number.

2c. Should any type of building be excluded from permission to convert to TIC owner-occupancy or have priority if permits are being granted?

The City may wish to ban conversion of buildings with more than a certain number of units in order to prevent conversion from reaching into that sector of the rental housing stock. TICs have not been formed in properties with over 10 units, although there is an effort to sell an 18 unit building to owner-occupants as a real estate partnership, and very few exist in properties with over four units. A reasonable case can be made on this grounds for a ban on conversion in properties with anywhere from over four to over ten units. TICs with five or more units come under the jurisdiction of the California Department of Real Estate rules for creation of subdivisions. As an alternative, the City might give priority within an annual limit on permits to owner-occupancy in smaller buildings, and/or to TICs with a greater percentage of current tenants who are buying.

2d. Can TICs be regulated without numerical limitations?

If loss of low-income units is mitigated by the seller, there is no necessity of restricting conversion to owner-occupancy. One alternative would be for the City to require sellers to pay a mitigation fee for the loss of controlled rental units. If the fee was adequate to replace lost units further restrictions would be unnecessary. Indeed, if the mitigation was adequate, the City could reconsider its ban on condominium conversions. Various people involved in real estate locally estimate that condominium conversions would sell for substantially higher prices than TICs. This would reduce affordability to homeowners, but make a higher level of resources available to mitigate loss of affordable rental units. Indeed, allowing current TIC owners to convert for a reduced fee could recapture some mitigation benefits even from those units already converted.



## APPENDICES

1. TIC model disclosure statement
2. TIC map
3. TIC values
4. City Attorney's letter on regulation of TICs
5. Department of Real Estate Reference Book excerpt on Tenancy in Common
6. TIC brochure by Elmwood Realty Investment (ERI)
7. Letter from Jon Petrie on the economics of TIC conversion
8. Letter from owner of 5 unit building to tenant
9. Letter from realtor to tenant of 5 unit building
10. Letter from tenant of 5 unit building to Rent Board
11. Letter from Michael St. John on "harassment" issue
12. Letter from Normandy Village tenants to City Council
13. Letter from Joe Brooks on legality of Normandy Village evictions
14. Letter from Michael St. John on Normandy Village
15. Press coverage of TIC subcommittee
16. Recent cartoon from the New Yorker

## TENANTS IN COMMON STANDARD DISCLOSURE FORM

PROPERTY ADDRESS \_\_\_\_\_  
BUYER \_\_\_\_\_  
SELLER \_\_\_\_\_

The property interest offered for sale is a tenancy in common.

The purchase, ownership and resale of property in the form of tenancy in common differs from that of a condominium or other form of ownership in a number of aspects that materially affect the owner's rights in the property, their legal and financial relationships with each other, the resale of the property and loan financing secured by the property.

The buyer is purchasing an undivided interest in the property, not a specific unit or exclusive right to occupy a specific unit of the property, and it is therefore advisable that the occupancy of specific areas of the property be addressed in a tenancy in common agreement or other appropriate document entered into between the owners of the property.

It is important for the co-owners of the property to enter into a formal written agreement between them in order to adequately provide for the issues that may arise due to the ownership of the property as tenants in common. Such an agreement should be prepared with the advice of an attorney knowledgeable in this area of the law.

**In all events, before entering into the purchase the buyer should seek the advice of an attorney and fully inform him or her self about the transaction, the applicable law, and its effect upon the transaction, any tenants in common agreements regarding the property, and the potential issues that can arise regarding the ownership, sale and refinancing of tenancy in common interests in general.**

### 1. TENANCY IN COMMON AGREEMENTS

Tenancy in common agreements typically contain rules and restrictions that are binding on the co-owners. You should study, seek legal counsel about, and approve any such agreements prior to purchase. If agreements are not written, you are undertaking a considerable increased risk.

Your occupancy and enjoyment of the subject property is clearly dependent upon the ability of all the co-owners to reason and work together. Buyers should review the tenants in common agreement as to which decisions require majority, more than majority, or unanimous votes. A majority vote requirement may impose on the minority undesirable or unaffordable expenses. A unanimity requirement may make the property unmanageable. Additionally, individual owners may have the right to force the sale of the entire property unless precluded from doing so by an enforceable waiver of partition clause in the agreement.



## 2. REGULATION

If more than 4 and less than 11 buyers are purchasing undivided interests in property, California Form RE680 (Rev 6/89) derived from Paragraph 11000.1(b)(2) of the California Business & Professions Code must be signed and filed with the Department of Real Estate, 2201 Broadway, P.O. Box 187005, Sacramento, CA, 95818-7005. If more than 10 owners are anticipated then a public report issued by the Department of Real Estate will be required.

The City of Berkeley requires that a property disclosure report be provided by the seller and any real estate agent involved in the transaction.

Berkeley's rent control law may limit your ability to rent the unit that you occupy for an amount adequate to cover your payments. It may limit the rent you can collect from a roommate. It may prevent you from recovering possession of your home from a tenant. Violations of the rent law may result in substantial monetary penalties.

Zoning and use permit regulations control the use of the building. Units which are residential cannot be converted to business use even if zoned to allow business use. You are advised to consult with the City of Berkeley Zoning Department as to the number of legal units on the property.

## 3. FINANCING

In co-ownership, all names are on the deed. If you are securing financing from a financial institution, all names will be on the loan. You need to assure yourself that your co-owners are able to and intend to pay their share of the obligation. Failure of any party to pay their share of the obligation will require the other co-owners to cover this deficiency. The written co-ownership agreement may specify in advance how such an event would be handled. The agreement may call for foreclosure or forced sale.

In resale of an undivided interest, additional financing may be needed. The only source of such financing may be the seller in the form of carrying back a secured or unsecured note from the new buyer. If you do provide seller financing, state law requires that you provide a seller financing disclosure to be signed by both the buyer and seller.

The loan proposed for this transaction may be a variable rate loan. It may or may not provide for increases in principal amounts without refinancing. It may or may not provide for replacing one borrower with another in the case of the sale of an undivided interest. Additional costs and restrictions may apply to either of these options. You are advised to carefully examine all loan documents. If a lump sum payment (balloon) is required at some future date, make sure that you have a way of procuring funds at that time.

The co-ownership agreement may require that all co-owners participate in refinancing if any co-own wishes to sell. Refinancing generally involves significant costs (loan fees, escrow fees, title insurance, etc.). The co-ownership agreement should specify who is responsible for such costs.

Common loans are variable interest with variable payment. Different co-owners may have different desires as to payment amount and plans (amortization, negative amortization, etc.). A provision may be made to have a manager receive each co-owners payment, consolidate and send to the lender, and keep records of each co-owners balance.

#### 4. RESALE OF INTERESTS

The future value of your undivided interest will depend on many factors including: the general state of the economy and real estate market, regulation in Berkeley and California, supply and demand, availability of financing, how well the co-owners and tenants work together and maintain and improve the property.

#### 5. MAINTENANCE

You are advised to obtain a general inspection of the property as to its condition (roof, plumbing, wiring, foundation, etc.) and a general schedule of necessary maintenance and replacement costs. Provisions should be made in the co-ownership agreement to provide for such costs. It is advisable that a maintenance fund be established. It should be clear in the agreement who is responsible for maintenance of the buildings and grounds.

THE UNDERSIGNED DO HEREBY ACKNOWLEDGE RECEIPT OF THIS DISCLOSURE FORM.

SELLER \_\_\_\_\_

SELLER \_\_\_\_\_

BUYER \_\_\_\_\_

BUYER \_\_\_\_\_

REAL ESTATE AGENT \_\_\_\_\_ OFFICE \_\_\_\_\_  
(seller)

REAL ESTATE AGENT \_\_\_\_\_ OFFICE \_\_\_\_\_  
(buyer)



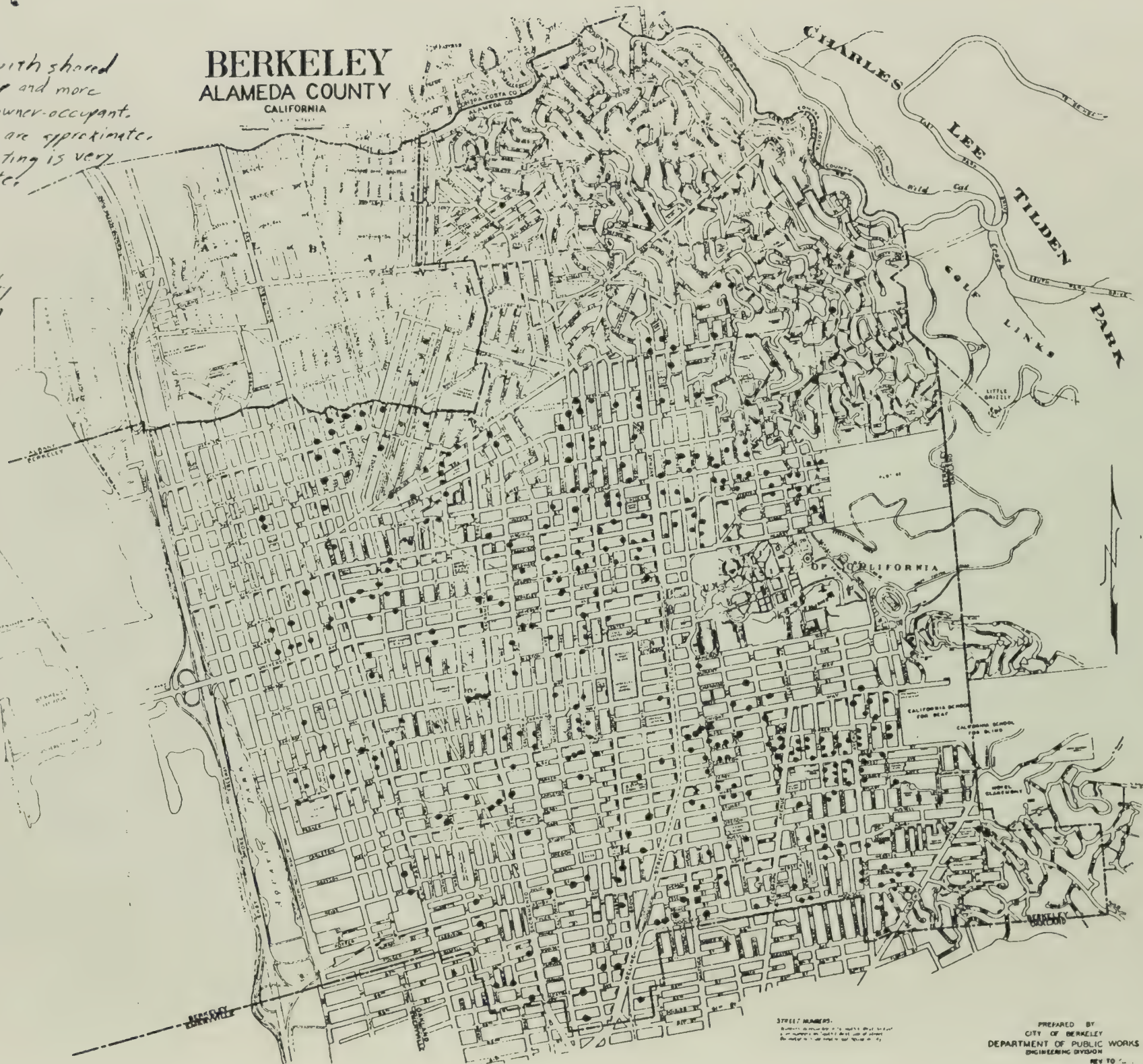


TICs

- = Building with shared ownership and more than one owner-occupant.
- Locations are approximate.  
This listing is very incomplete.

Prepared by:  
S. Barton  
PPMB  
City of Berkeley  
October 1989

# BERKELEY ALAMEDA COUNTY CALIFORNIA



STREET NUMBERS:  
Berkeley's street numbering system is based on the following principles:  
1. All streets are numbered from 1st to 24th.  
2. The number of the street is the number of blocks from the main street.  
3. The number of the block is the number of lots in the block.

PREPARED BY  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION  
REV TO 10





## TIC AVERAGE VALUES

December 20, 1989

Average Rent	Rental Unit Value	TIC Sales Price	Per Unit	Monthly Payment	Affordable Income		
			Value Difference		Rental	Purchase	Difference
\$447	\$53,590	\$111,699	\$58,109	\$931	\$17,863	\$33,510	\$15,646

Data is from a non-random set of 62 sales in 1986-89.

Two-unit properties are under-represented. Other biases may exist.

Rents are taken from Rent Stabilization Program records.

Rents were not available for all units. Available rents were averaged.

Annual increases are included to get a 1989 rent.

Not all units in these buildings were sold and there is no necessary correspondence between units sold and units with rental information.

Rental Unit Value is based on an estimated Gross Rent Multiple of 10.

A 1984 study by Nathan Landau found an average GRM of 9, with a range of from 6.5 to 13.6 depending on building condition, financing and location.

TIC Sales Price is an average of all reported unit sales prices or asking prices.

Prices are not corrected for inflation.

Per Unit Value Difference is the estimated increase in price per unit as a TIC versus as rental property.

Monthly Payment assumes a 20% downpayment, taxes and insurance equal to 2% of purchase price and mortgage interest and amortization payments at 10% per year on 80% of purchase price.

Affordable Income:

Rental is the income at which the allowed rent is 30% of gross income.

Purchase assumes monthly payments are one-third of gross income.

Difference is the difference between purchase and rental affordable incomes.



Average Rent	Units	Rental Unit Value	Unit Sales Price	Per Unit	Affordable Income		
				Value Difference	Rental	Purchase	Difference
\$166	2	\$19,920	\$75,000	\$55,080	\$6,640	\$22,500	\$15,860
\$220	6	\$26,340	\$85,000	\$58,660	\$8,780	\$25,500	\$16,720
\$229	4	\$27,480	\$65,000	\$37,520	\$9,160	\$19,500	\$10,340
\$234	4	\$28,080	\$140,000	\$111,920	\$9,360	\$42,000	\$32,640
\$238	2	\$28,547	\$95,000	\$66,453	\$9,516	\$28,500	\$18,984
\$241	3	\$28,920	\$45,000	\$16,080	\$9,640	\$13,500	\$3,860
\$253	4	\$30,330	\$100,000	\$69,670	\$10,110	\$30,000	\$19,890
\$262	2	\$31,394	\$80,000	\$48,606	\$10,465	\$24,000	\$13,535
\$267	5	\$32,080	\$130,000	\$97,920	\$10,693	\$39,000	\$28,307
\$273	4	\$32,700	\$100,000	\$67,300	\$10,900	\$30,000	\$19,100
\$283	5	\$33,960	\$139,000	\$105,040	\$11,320	\$41,700	\$30,380
\$285	3	\$34,237	\$87,000	\$52,763	\$11,412	\$26,100	\$14,688
\$293	4	\$35,160	\$50,000	\$14,840	\$11,720	\$15,000	\$3,280
\$320	4	\$38,340	\$125,000	\$86,660	\$12,780	\$37,500	\$24,720
\$321	3	\$38,460	\$89,000	\$50,540	\$12,820	\$26,700	\$13,880
\$326	6	\$39,120	\$155,000	\$115,880	\$13,040	\$46,500	\$33,460
\$334	4	\$40,060	\$88,000	\$47,940	\$13,353	\$26,400	\$13,047
\$335	10	\$40,149	\$100,000	\$59,851	\$13,383	\$30,000	\$16,617
\$350	2	\$42,000	\$158,000	\$116,000	\$14,000	\$47,400	\$33,400
\$353	4	\$42,364	\$125,000	\$82,636	\$14,121	\$37,500	\$23,379
\$353	3	\$42,387	\$90,000	\$47,613	\$14,129	\$27,000	\$12,871
\$362	4	\$43,380	\$56,000	\$12,620	\$14,460	\$16,800	\$2,340
\$373	2	\$44,760	\$60,000	\$15,240	\$14,920	\$18,000	\$3,080
\$387	4	\$46,440	\$108,333	\$61,893	\$15,480	\$32,500	\$17,020
\$392	2	\$47,040	\$173,000	\$125,960	\$15,680	\$51,900	\$36,220
\$393	2	\$47,161	\$132,000	\$84,839	\$15,720	\$39,600	\$23,880
\$396	4	\$47,510	\$92,000	\$44,490	\$15,837	\$27,600	\$11,763
\$400	4	\$48,000	\$70,000	\$22,000	\$16,000	\$21,000	\$5,000
\$431	2	\$51,665	\$140,000	\$88,335	\$17,222	\$42,000	\$24,778
\$434	3	\$52,096	\$113,000	\$60,904	\$17,365	\$33,900	\$16,535
\$437	4	\$52,380	\$135,000	\$82,620	\$17,460	\$40,500	\$23,040
\$441	2	\$52,920	\$86,000	\$33,080	\$17,640	\$25,800	\$8,160
\$448	6	\$53,704	\$140,000	\$86,296	\$17,901	\$42,000	\$24,099
\$449	5	\$53,904	\$85,000	\$31,096	\$17,968	\$25,500	\$7,532
\$452	2	\$54,180	\$148,000	\$93,820	\$18,060	\$44,400	\$26,340
\$453	4	\$54,360	\$171,000	\$116,640	\$18,120	\$51,300	\$33,180
\$455	7	\$54,600	\$120,000	\$65,400	\$18,200	\$36,000	\$17,800
\$467	4	\$56,080	\$150,000	\$93,920	\$18,693	\$45,000	\$26,307
\$472	4	\$56,580	\$104,000	\$47,420	\$18,860	\$31,200	\$12,340
\$477	4	\$57,240	\$145,000	\$87,760	\$19,080	\$43,500	\$24,420
\$477	4	\$57,240	\$85,000	\$27,760	\$19,080	\$25,500	\$6,420
\$491	4	\$58,920	\$138,000	\$79,080	\$19,640	\$41,400	\$21,760
\$496	3	\$59,520	\$86,000	\$26,480	\$19,840	\$25,800	\$5,960
\$506	3	\$60,688	\$130,000	\$69,312	\$20,229	\$39,000	\$18,771
\$506	3	\$60,688	\$154,000	\$93,312	\$20,229	\$46,200	\$25,971
\$518	2	\$62,100	\$130,000	\$67,900	\$20,700	\$39,000	\$18,300
\$538	4	\$64,560	\$90,000	\$25,440	\$21,520	\$27,000	\$5,480
\$559	2	\$67,080	\$108,000	\$40,920	\$22,360	\$32,400	\$10,040
\$563	5	\$67,525	\$110,000	\$42,475	\$22,508	\$33,000	\$10,492
\$565	2	\$67,856	\$69,000	\$1,144	\$22,619	\$20,700	(\$1,919)
\$569	4	\$68,280	\$125,000	\$56,720	\$22,760	\$37,500	\$14,740
\$576	4	\$69,090	\$115,000	\$45,910	\$23,030	\$34,500	\$11,470
\$619	4	\$74,220	\$99,000	\$24,780	\$24,740	\$29,700	\$4,960
\$627	3	\$75,280	\$113,000	\$37,720	\$25,093	\$33,900	\$8,807
\$653	4	\$78,400	\$128,000	\$49,600	\$26,133	\$38,400	\$12,267
\$675	3	\$81,000	\$142,000	\$61,000	\$27,000	\$42,600	\$15,600
\$691	3	\$82,860	\$150,000	\$67,140	\$27,620	\$45,000	\$17,380
\$718	4	\$86,160	\$105,000	\$18,840	\$28,720	\$31,500	\$2,780
\$742	4	\$89,040	\$90,000	\$960	\$29,680	\$27,000	(\$2,680)
\$768	2	\$92,160	\$140,000	\$47,840	\$30,720	\$42,000	\$11,280
\$826	2	\$99,120	\$135,000	\$35,880	\$33,040	\$40,500	\$7,460
\$956	2	\$114,751	\$134,000	\$19,249	\$38,250	\$40,200	\$1,950

CITY OF BERKELEY

Memorandum

DATE: September 20, 1989

TO: Eve Bach, Assistant City Manager for Planning and Community Development

FROM: Manuela Albuquerque, City Attorney  
By: Thomas B. Brown, Deputy City Attorney III

SUBJECT: REGULATION OF TENANCIES IN COMMON

This is in response to the second inquiry of your memorandum dated August 24, 1989. Your first inquiry will be responded to separately by Marjorie Gelb of this office.

ISSUE:

May the City regulate the sale and/or conversion of buildings containing residential rental units to tenants in common?

CONCLUSION:

Yes. Such conversions may be regulated either as a form of subdivision under the City's subdivision ordinance, or as a land-use matter through the Zoning Ordinance or Municipal Code.

DISCUSSION:

The precise issue of whether the tenancy in common form of ownership, and conversions of rental units thereto, has never been addressed directly by any California Court. It has been held repeatedly, however, in the closely-related context of local ordinances regulating condominium conversions, that charter (and general law) cities properly may regulate changes in form of ownership as a legitimate exercise of their police power. (See, e.g., Griffin Development Co. v. City of Oxnard (1985) 39 Cal.3d 256, 262-64 [217 Cal.Rptr. 1]; Santa Monica Pines, LTD. v. Rent Control Board (1984) 35 Cal.3d 858, 869 [201 Cal.Rptr. 593]; Leavenworth Properties v. City and County of San Francisco (1987) 189 Cal.App.3d 986, 990-91 [234 Cal.Rptr. 598].) Such local ordinances regulating changes of ownership have survived attacks on due process, equal protection and "takings" grounds. (See Griffin, supra, 39 Cal.3d 256, 262; Leavenworth, supra, 189 Cal.App.3d 986, 990-994.)

Moreover, the fact that the Subdivision Map Act (Government Code sections 66401-66499) does not expressly include



Eve Bach  
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tenancies in common among those transactions deemed subdivisions under the Act does not preclude cities from regulating such form of ownership transfers. While the Subdivision Map Act preempts substantive and procedural concerns expressly covered by the Act, it does not preclude cities from adopting nonconflicting condominium conversion regulations (Griffin, supra, 39 Cal.3d at 262), or from exercising their police power in connection with matters outside the scope of the Act, provided such matters are not calculated to circumvent the Act's express provisions. (McMullan v. Santa Monica Rent Control Board (1985) 168 Cal.App.3d 960, 962-63 [214 Cal.Rptr. 617].) "Stated another way, while the act may be the final word respecting the subdivision process, it does not purport and may not be understood to be preemptive of all land use regulation." (Id.)

Nor do the decisions in Adler v. Elphic (1986) 184 Cal.App.3d 642 [229 Cal.Rptr. 254] and Bakanauskas v. Urdan (1988) 206 Cal.App.3d 621 [253 Cal.Rptr. 764] operate to restrict the City's ability to regulate tenancies in common. Both Adler and Bakanauskas ruled only that the City's regulation of "community apartment projects" (former B.M.C. section 21.52.070) did not include tenancies in common. This ruling was not premised on a conclusion that the City had no power to regulate tenancies in common, but rather on the fact that the City's ordinance purported to regulate only "community apartments," and that tenancies in common, by statutory and common law by definition, could not be construed as community apartments. (Adler, supra, 184 Cal.App.3d 642, 646; Bakanauskas, supra, 206 Cal.App.3d at 629.)

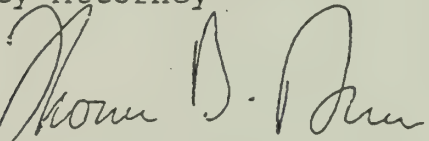
In short, we conclude that the City has the power to regulate conversions or sales of properties containing former rental units to tenancies in common. This may be accomplished by several methods. For example, Sections 21.28.010 and 21.28.050 of the City's subdivision ordinance could be amended to include tenancies in common among those conversions subject to B.M.C. Chapter 21 and Section 21.28.050. Alternatively, Section 21.28.030 (definitions) could be amended to add a definition of the term "condominium project" which might include tenancies in common. In addition, a new chapter could be added to the Zoning Ordinance or Municipal Code prohibiting such conversions altogether, or without a permit.

We would recommend, however, that any such ordinance contain express findings concerning the need for such regulation. For example, the ordinance might be based on findings that  
(1) there continues to be a shortage of affordable rental

Eve Bach  
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Page 3

housing in the City, (2) that conversions to tenancies in common have occurred in substantial numbers in the past, resulting in a detrimental reduction of the number of affordable rental units, and/or (3) that such conversions also have resulted in difficulties and hardships on buyers of tenancies in common, such as the subsequent inability of an individual tenant in common to sell his/her interest. Such findings, of course, should be supported by studies or other evidence, possibly generated during a public hearing process.

MANUELA ALBUQUERQUE  
City Attorney

By   
THOMAS B. BROWN  
Deputy City Attorney III

TBB:dej

cc: City Clerk  
Gil Kelley, Planning Administrator



property in severalty (separately).

CONCURRENT OWNERSHIP

Concurrent ownership or co-ownership on the other hand means simultaneous ownership of a given piece of property by two or more persons. The several types of concurrent ownership are:

Tenancy In Common

(a) *Tenancy in common* exists when two or more persons are owners of undivided interests in a single estate. It is created whenever an instrument conveying an interest in real property (or personal property for that matter) to two or more persons does not specify that the interest is acquired by them in joint tenancy or in partnership or as community property.

Example: Interests of such cotenants may be any fraction of the whole—thus one may own one-tenth, another three-tenths, and a third party may own the remaining six-tenths. The deed to cotenants should recite their respective interests, or there is a presumption their interests are equal.

There is a unity of possession in *tenancy in common*, meaning each owner has a right to possession and none can exclude the others nor claim any specific portion for himself or herself alone. It follows that no tenant in common while in possession can be charged rent for the use of the land unless otherwise agreed to by all tenants. On the other hand a tenant in common who receives rent for the premises from a third party, must divide such profits with the other tenants in common in proportion to the shares owned. By the same token payments made by one tenant in common for the benefit of all may normally be recovered on a proportionate basis from all. These might include moneys spent for repairs, taxes, interest and principal under a trust deed. Of course this would not apply to unnecessary improvements, unless made with the consent of the other owners.

Any tenant in common is free to sell, convey or mortgage the tenant's own interest as he or she sees fit, and the new owner simply takes a place as a tenant in common with the other owner or owners. Sometimes this may be impractical, and the tenant in common may force a sale of the entire property by filing an action in court known as a "partition action." At a death there is no right of survivorship, the undivided interest of a tenant in common passes to his or her heirs or devisees who simply take the tenant's place among the owners of the property in common.

Joint Tenancy

(b) *Joint tenancy* exists when two or more persons are joint and equal owners of the same undivided interest in specified real (or personal) property. Dating back many years to the classic "Commentaries" of Blackstone, this identity, under which each owner has exactly the same rights as every other owner, is described as a fourfold unity: "the unity of interest, the unity of title, the unity of time, and the unity of possession; in other words, joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same possession."

**Right of Survivorship.** The most important characteristic of joint tenancy from a practical standpoint however is the *right of survivorship* which flows from the unity of interest. It means that if one joint tenant dies the surviving joint tenant (or tenants) immediately becomes the sole

CONCURRENT—CO-OWNERSHIP INTERESTS

	Tenancy in common		Joint tenancy		Community property		Tenancy in partnership	
	Any number of persons (can be husband and wife)	Ownership can be divided into any number of interests equal or unequal	Any number of persons (can be husband and wife)	Ownership interests must be equal	Only husband and wife	Ownership interests are equal	Only partners (any number)	Ownership interest is in relation to interest in partnership
Parties	Each co-owner has a separate legal title to his or her undivided interest	Equal right of possession	There is only one title to the whole property	Equal right of possession	There is only one title but each co-owner has a separate interest	Equal right of management and control except in the case of personal property used in a business	Each co-owner's interest is owned in partnership for partnership purposes	Equal right of possession for partnership purposes. No right of possession for any other purposes except by mutual consent
Division	Each co-owner's interest may be conveyed separately by its owner	Each co-owner's interest may be conveyed separately by its owner	A conveyance by one of the joint tenants alone breaks the joint tenancy between the others but does not affect the continuation of the joint tenancy between the interests of any two or more other joint tenants	Purchaser will become a tenant in common with the other co-owners in the property	Interests cannot be conveyed separately. Both co-owners must join in conveyance of real property. Either co-owner can transfer personal property	Interests cannot be conveyed separately. Both co-owners must join in conveyance of real property. Either co-owner can transfer personal property	Partner's individual interest in specific property cannot be conveyed separately. Any authorized partner can convey the whole partnership title	Partner's individual interest in specific property cannot be conveyed separately. Any authorized partner can convey the whole partnership title
Title	Purchaser will become a tenant in common with the other co-owners in the property	On co-owner's death his or her interest passes to the devisees under will or to the heirs. No survivorship right	On co-owner's death, his or her interest ends and cannot be disposed of by will. Survivor owns the property by survivorship	Last survivor owns property in severalty	Co-owner's interest may be sold on execution sale to satisfy a creditor. Purchaser becomes a tenant in common	On partner's death the partner's interest in the surviving partnership property vests in the surviving partners. The value realized out of its liquidation is accounted for to the partner's estate	Purchaser can only acquire the whole title unless he or she becomes a partner	On partner's death the partner's interest in the surviving partnership property vests in the surviving partners. The value realized out of its liquidation is accounted for to the partner's estate
Possession	Devisees or heirs become tenants in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Purchaser becomes a tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Devisees or heirs have no rights in specific partnership property	Partner's interest cannot be sold separately by the partner's personal creditor, but the partner's share of profits may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor	Devisees or heirs have no rights in specific partnership property	Partner's interest cannot be sold separately by the partner's personal creditor, but the partner's share of profits may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor
Conveyance	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common
Purchaser's Status	On co-owner's death, his or her interest passes to the devisees under will or to the heirs. No survivorship right	On co-owner's death, his or her interest ends and cannot be disposed of by will. Survivor owns the property by survivorship	Last survivor owns property in severalty	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Devisees or heirs have no rights in specific partnership property	Partner's interest cannot be sold separately by the partner's personal creditor, but the partner's share of profits may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor	Devisees or heirs have no rights in specific partnership property	Partner's interest cannot be sold separately by the partner's personal creditor, but the partner's share of profits may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor
Death	Devisees or heirs become tenants in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Purchaser becomes a tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common
Successor's Status	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common
Creditor's Rights	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common	Co-owner's interest may be sold on execution sale to satisfy a creditor. Joint tenancy is broken, purchaser becomes tenant in common
Presumption	Favored in doubtful cases except husband and wife case	Favored in doubtful cases except husband and wife case	Favored in doubtful cases except husband and wife case	Favored in doubtful cases except husband and wife case	Favored in doubtful cases except husband and wife case	Favored in doubtful cases except husband and wife case	Favored in doubtful cases except husband and wife case	Favored in doubtful cases except husband and wife case



## Berkeley & T-I-C's:

### Some Old Fashioned American Economics!

#### *Berkeley has a shortage of affordable housing.*

- *In the 60's* as many large apartments were built, Berkeley increased its tenant population.
- *Apartment building was stopped* by the neighborhood preservation act. People kept moving to Berkeley and not leaving, and eventually upwards rent pressure caused a rent control ordinance to be passed.
- *Rents, after 10 years of rent control, are low* relative to demand, and very low relative to the cost of purchasing property.
- *Naturally, people tend to keep* rent controlled apartments. Students do not always leave after their education is finished.
- *Property owners perceive* that the rent control board has become a difficult bureaucracy, and that rent increases, while possible, are time consuming and costly. Investment property owners naturally seek to maximize their financial return.
- So, as time has gone by, a wider and wider \$ gap* has come to exist between what an owner can legally collect in rent, and the value of a building for owner occupancy. (Many buildings have been owner occupied for years in any case.) When a unit can be legally rented for \$250-\$500, but a partner will pay \$100-\$150,000 to share ownership of the building and live in the vacant unit, some owners pick the best financial alternative and sell. Not wanting to sell for personal or tax reasons, most do not. The volume of sales, while growing, is surprisingly small considering the financial incentive.
- *Tenants have very powerful rights* under Berkeley law. Very few tenants, if any, have been hurt by the growing sales of T-I-Cs. People generally purchase a share when they need a place to live. If a unit is not vacant for the new co-owner to occupy, there is no incentive to purchase. Buyers typically do not evict.
- *Many tenants have profitted from T-I-Cs.* Buildings and T-I-C shares have been sold to tenants. Owners have paid tenants considerable sums to relocate. This added to the tenants own savings, may permit the tenant's own purchase of a home.
- *Berkeley City government* has a hard time collecting enough taxes to run the city and schools because the resale prices of tenant occupied property are so low as to keep property taxes from increasing. The T-I-C movement also helps the city with considerable increased appraisals and taxes collected.

*Thus the T-I-C movement* does not seem to be causing adverse consequences to any class of folk; rather it is increasing Berkeley's permanent base of resident property owners, increasing the tax base, while all Berkeley's tenants remain protected by law, and some profit from moving or buying.

## Tenants in Common Ownership:

### What Is It? How does it work?

The purpose of this pamphlet is to introduce you to the concept of T-I-C the reality, the advantages, & the disadvantages. It is to help you proceed if you wish.

*T-I-C ownership* of a piece of real estate is common in California and in other states. It simply means that the property is owned by more than one person, and that the form of ownership is not a joint or community property. (Although you may own your tenant in common share jointly or as community property.) If you and your neighbor buy the apartment building across the street or a home at Tahoe as an investment you will own the property as tenants in common. All owners' names are on the deed. You may then do what you wish with the property in accordance with local law.

- *Ownership is an undivided interest.* That is, if 3 folks buy a 9 unit building they each own 1/3 of the entire property. No one owns a particular unit or house--although each may live there.
- *You may agree among yourselves as to use of the property.* You may wish to live there and occupy units. You may wish your children or parents to live there. In Berkeley, as long as you follow the rent control law, you may use the property as you wish. ERI suggests that you not plan on evicting a tenant.
- *By law you have the right to sell your share* of the common property without your co-owners selling their shares. You simply accept payment in whatever form you wish and sign a grant deed. Any title company can help you.
- *Financing is about the same* as purchasing any other property. All the owners file loan applications with a lender, and after the usual credit reports, income verification, and other paperwork, the bank makes a loan to all buyers together.
- *Planning and getting the right financing to permit resale* of one share is also easy. A number of lenders makes loans that have wonderful features: they permit co-owners to be added or deleted, AND, they permit the loan to be increased annually. This is handy if one partner resells at a profit and wishes to get his profit in cash. You will need solid advice as to which lenders to use and how to approach them.
- *Written agreements.* Good fences make good neighbors and written agreements make good co-owners. Most Berkeley lawyers have T-I-C agreements. ERI has a good one for our clients. ERI agents help you work out the details of your plans.

## Tenants in Common Ownership

*is good for*

**Sellers, who improve their income.**

**Buyers, who own their home.**

**Tenants, who may buy, keep renting, or get \$.**

## Advantages & Disadvantages: Buyers

Like all new ideas, there are pluses and minuses. You must understand what these are before you proceed.

- *Berkeley has many beautiful old multi-unit buildings.* A unit with a fireplace, panelling, large kitchen, and a separate living room and dining room really can feel like home.
- *Affordability:* The Elmwood or near UC on the North Side, may be just where you wish to live. A home can cost \$450,000 +, but a share for \$125,000 to \$250,000 may fill your needs.
- *Ease of maintenance:* ERI offers complete property management, from bookkeeping to calling the plumber and mowing the lawn.
- *Sharing a loan obligation* can be a worry. It is clear that with all on the loan together, if one doesn't pay, the others must. A good tenant in common agreement builds a reserve, and establishes that an owner who doesn't pay must sell their share. Good purchasing practice requires meaningful downpayments.
- *Living conditions* are important. You need agreements on pets, noise, etc. With a good T-I-C agreement, these rules exist.
- *Financing* is very important. If your agreement does not provide for all owners to cooperate in a refinancing for one owner's resale, you will not get the best price when you sell.
- *Profitable resale* starts with intelligent purchasing. Resale is simply a matter of finding a buyer in the usual real estate way, either by yourself or with a realtor. Many multiple listings in Berkeley are T-I-C shares.
- *Intelligent purchasing* is extremely important. As this is written in September 1989, there have been both smart and not so smart buys on the market this year.
- *Not all T-I-C's are equal.* When considering a T-I-C, check for the following:
  - 1- Normal housing style and appearance.
  - 2- Top condition: Only buy with a complete termite clearance, and good reports on roof and foundation.
  - 3- T-I-C "fixers" are OK if just your unit needs TLC. See #2.
  - 4- Location & Location: T-I-C works in top areas.
  - 5- 2-4 Unit buildings have the highest prices because of financing. 2-4 is important if you need to sell within 4 years.
  - 6- 5-10 units should cost less per share as loans are not as flexible--good for the long term owner. More than 10? ask us.
  - 7- Make sure your co-owners have clean credit reports and have solid income 3 times their loan + taxes + insurance. You can count on ERI to check this out.
  - 8- The best financing will permit an individual owner to sell and replace himself on the loan with a buyer, whether with conventional or seller-carry financing.
  - 9- Use a Professional Realtor who really understands T-I-C. Make sure your Realtor is ERI.



## T.I.C. for TENANTS

*You are a Berkeley tenant* in a handsome old building with rents that you find very reasonable. You love where you live; it is your home; you don't really wish to move. In fact, you have put off buying a home because your low cost of living permits you some options such as part time work, travel, private schools, living in a great neighborhood, as well as building your savings.

But, you are worried that you are not building capital. Some friends have bought homes, the values have gone up; you wonder how to plan for your financial and housing future.

*Or perhaps you have a limited income* and for age or health reasons, working is not possible for you. Like many Berkeley tenants, your rent controlled apartment keeps you from having to live in a much less desirable setting.

In any case, you have heard about T-I-C and wonder how it affects you. Here are some answers:

**Evictions:** T-I-C sales will not affect your rights as a tenant. Berkeley tenants are protected by the rent control law. As long as you pay your rent and do not damage the premises, you can only be evicted by an owner of 50% of the entire property for his own, his kids', or his parents' occupancy. In a building of more than 2 units, eviction is unlikely. In a building of more than 5 units, it is extremely unlikely.

**Opportunities:** Your property owner may be willing to sell all or a portion of the building to you and your fellow tenants. He may be willing to sell it at a price that benefits you both and on very fair terms—he may carry the loan! In this way both owner and tenant can benefit. The tenant all of a sudden owns his own home. The usual benefits apply: increase in value over the years, tax deductibility of monthly payments, and security of possession of a home.

Your after tax costs can remain affordable because of the deductibility of interest and taxes, but the payments to the owner increase. You have traded higher payments to the owner for the right to future appreciation of the property.

**Another opportunity,** if your plans do not include staying around Berkeley or living in your current unit, may be a relocation payment from your owner. A vacant unit is worth more than a rented unit, and owners frequently will pay tenants money that can materially help with a downpayment, if you agree to vacate.

**In summary,** T-I-C, may be a considerable opportunity for you, a Berkeley tenant, and in almost all cases, it will not be a problem to you if you do not wish to move. ERI will be glad to consult with you about your opportunities.

## ERI - Elmwood Realty Investment LP

ERI is a *full service* Real Estate Company located in the new office building at 2980 College Ave, on the old Berkeley Rep site, just across the street from Bott's Ice Cream

Our Brokers and Agents sell *single family homes* and condos; we also sell a large number of *multiple unit buildings* and *tenant in common shares*.

We have worked for several years to fully understand T-I-C's, and devise *prudent, conservative* approaches to co-ownership.

*Co-ownership* of the larger handsome buildings near UC has been the answer for many parents for student housing.

Professional singles and couples, looking for the benefits of homeownership at *affordable* prices also find the high quality of Berkeley's multi-units very desirable.

ERI strives to work *within the Berkeley system*. Rent control was passed by the voters and must be honored. Individual tenants not only have rights under Berkeley laws, but are people too. *(We do not evict to create a tenant in common sale — it is illegal. We will work with tenants and compensate them to move if such meets their needs too, and, in fact, we have helped a number of tenants get settlements and move within Berkeley.)*

ERI believes that some buildings are suitable for T-I-C sales, and many not. We will be glad to meet with an owner, tenant or other buyer to evaluate a situation. We have conducted many successful sales of partial or entire buildings. We have arranged for tenants to purchase. We manage a number of these buildings for the owners. We have encountered no particular difficulty with the concept or its administration.

ERI sometimes is asked to resell a share of a T-I-C created by others. We have discovered the need to revise agreements between owners to facilitate resale. (Many early T-I-Cs have agreements that are not complete by current standards.)

ERI would be pleased to consult with you re current agreements, plan future sales, etc. We will also tell you frankly if we think the building and the proposed method of resale is suitable, doable and workable.

### Call our T-I-C specialists at home too:

	Northside	
Billy Karp	Spruce St.	843-4596
Linda Goldman	Hilgard Ave.	841-4670
Dorothy Jacob	Scenic Ave.	848-7598
Francesco Papalla	Albany	525-1165
	Southside	
George Oram	Hillegass Ave.	849-1630
Joe Civello	Ellsworth St.	841-6586
Dave Mani	Rockridge	342-1997
Emily Waldron	Elmwood	843-7881



about:

## TENANTS IN COMMON

# ERI

## ELMWOOD REALTY INVESTMENT L.P.

2980 COLLEGE AVE #4

George Oram, Broker

(415) 849-1646 (800) 344-3741

**ERI finds that East Bay property is a safe, convenient, recession-proof investment.**

Albany, Berkeley & Oakland have location, climate, easy commuting, and a steady employment base. We have housing demand from UCB, the San Francisco overflow, and the influx from the Pacific Basin.

*We find affordable homes for nice folks.*

**Affiliated with a National Relocation Network**

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COPIES TO :

FROM

STEVE BARTON  
DENISE PINKSTONE  
STUART GARDNER  
DAVID DAVIS

JOHN PETRIE :  
(548 5785)

2611 PIEDMONT  
BERKELEY 94704

JAN 18 '90

SOME RANDOM IDEAS / POINTS RE TIC'S

UNITS AT WATERGATE (INDIVIDUALLY OWNED  
CONDOS) SELL FOR ABOUT 12 TIMES GROSS  
RENTS, STRICT REVENUE PROPERTY SELLS  
FOR ABOUT 8 TIMES GROSS, RENT CONTROL  
IN BERKELEY HAS RESULTED IN ACTUAL  
ALLOWABLE RENTS BEING ABOUT 50% BELOW  
MARKET SO :

THERE IS AN ECONOMIC INCENTIVE TO  
CONVERT TO TIC'S BOTH BECAUSE OF  
RENT CONTROL AND BECAUSE PEOPLE  
ARE WILLING TO PAY A SIGNIFICANT  
PREMIUM OVER MARKET RENTAL CAPITALIZATION  
TO OWN THEIR OWN HOME. THE TWO  
FACTORS ARE ABOUT EQUALLY IMPORTANT.

✓ ADDITIONAL INFORMATION: I SOLD A CLASSY ONE BEDROOM TIC  
NEAR PARKER + DERBY FOR \$125,000 (ABOUT) IF IT HAD BEEN  
A CONDO PRICE WOULD HAVE BEEN \$150,000 PLUS. IN A FREE  
MARKET I DOUBT IF THE UNIT WOULD RENT FOR MORE THAN  
\$1,000 A MONTH - I.E., THE CONDO PRICE WOULD BE ABOUT 12  
TIMES THE GROSS FREE MARKET ANNUAL RENT



## II

THE DIFFERENCE BETWEEN THE PRICE THAT THE MARKET WILL PAY FOR A UNIT THAT IS RENT CONTROLLED AND THAT CAN ONLY BE RENTED AND A UNIT THAT CAN BE OCCUPIED AS A HOME IS ROUGHLY 100% (REGISTERED RENT VALUE TIMES 1.5 EQUALS FREE RENTAL MARKET VALUE FREE RENTAL MARKET VALUE TIMES 1.5 EQUALS VALUE AS A CONDO - SEE LAST PAGE)

SOME OF THIS DIFFERENCE COULD BE TAKED AWAY IN EXCHANGE FOR ALLOWING THE WITHDRAWAL OF A UNIT FROM THE RENTAL MARKET. SUCH A TAX WON'T RAISE THE PRICE FOR THE FINAL PURCHASER OR SIGNIFICANTLY SLOW CONVERSION TO TIC'S. THE MONEYS GAINED COULD BE USED FOR NO INTEREST LOANS TO LOW INCOME BELIEVEY BASED ~~(BASED ON INCOME)~~ INDIVIDUALS WHO WANT TO PURCHASE PROPERTY.

B

ALSO CONDO CONVERSION COULD BE ALLOWED AND TAXED e.g. ALLOW A MAXIMUM OF 10 ANNUALLY, MINIMUM PRICE TO CONVERT FROM TIC TO CONDO \$20 A SQUARE FOOT - BIDS TO BE SUBMITTED ~~ANNUALLY~~ SAY JAN 1<sup>st</sup> WITH A 10% DEPOSIT.

1) 1)

III THERE IS NO WAY THAT BERKELEY CAN HOUSE THE NUMBER OF PEOPLE WHO WOULD LIKE TO LIVE IN BERKELEY AT "AFFORDABLE" PRICES. THE CITY'S HOUSING IN PRACTICE IS RATIONED BY PRICE, BY A WILLINGNESS TO ENTER UNCONVENTIONAL ARRANGEMENTS (e.g. TIC<sup>2</sup>s), AND BY SOCIAL CONNECTIONS, LENGTH OF RESIDENCE IN BERKELEY, AND LUCK (RENT CONTROLLED UNITS). I SUGGEST THAT ADDITIONAL NON PRICE MECHANISMS THAT SERVE THE SOCIAL GOOD SHOULD BE ADOPTED TO RATION THE DEMAND FOR HOUSING IN ORDER TO SLOW PRICE RISES.

I BELIEVE THAT THERE IS A STRONG LINK BETWEEN POLLUTION / TRAFFIC CONGESTION AND THE DISTANCE PEOPLE TRAVEL BETWEEN THEIR RESIDENCES AND THEIR WORK. I WOULD ALSO SUGGEST THAT NEIGHBORHOODS IN WHICH PEOPLE WALK / BIKE TO WORK, COME HOME FOR LUNCH ARE SAFER, MORE NEIGHBORLY THAN NEIGHBORHOODS IN WHICH PEOPLE LEAVE EARLY IN THE MORNING IN THEIR AUTOMOBILES AND HAVE AN INCENTIVE TO EAT THEIR DINNERS



II CONTINUED

NEAR THEIR OFFICES BEFORE RETURNING HOME.  
IF BERKELEY SEES THE CONVERSION OF A  
PROPERTY FROM RENTALS TO HOME OWNERSHIP  
AS NOT A RIGHT BUT A PRIVILEGE IT COULD  
RESTRICT SALES OF THE CONVERTED UNITS  
TO PEOPLE WHOSE VITAL ECONOMIC ACTIVITY  
(E.G. JOBS, SCHOOLING) TAKES PLACE WITHIN,  
SAY, FOUR MILES OF THE UNIT <sup>3</sup> THEREBY  
PROMOTING NEIGHBORHOODNESS, CLEAN AIR AND  
TRAFFIC FLOW WHILE LOWERING THE DEMAND  
AND THUS THE PRICE OF THESE CONVERTED  
UNITS.

3

MY TENANTS IN COMMON AGREEMENT FAVOURS SALES  
TO BERKELEY BASED PEOPLE. ONE OF MY TWO TENANTS  
HAS BEEN COMMUTING TO BURLINGAME FOR 20 PLUS YEARS.

IV

A JUSTIFICATION FOR RENT CONTROL IS THE PROTECTION OF THE FINANCIALLY WEAK. IT IS POSSIBLE TO INCREASE THE SUPPLY OF AFFORDABLE HOUSING FOR THE FINANCIALLY WEAK BY DISCOURAGING THE FINANCIALLY STRONG FROM LIVING IN RENT CONTROLLED UNITS. SIMPLY TO PROFIT FROM THE WINDFALL OF BELOW MARKET RENTS. THE CITY AS DISCOURAGEMENT COULD REQUIRE THAT ITS WELL PAID EMPLOYEES, IF THEY ARE LIVING IN A RENT CONTROLLED APARTMENT PAY IN ADDITION TO THEIR RENT SAY 50% OF THEIR RENT TO A FUND THAT AIDS THE HOMELESS. I AM SUGGESTING THE ABOVE AS ONE OF MANY POSSIBLE ALTERNATIVES. PERHAPS IF THE OFFICERS OF THE RENT BOARD TOOK THE LEAD ON DEVELOPING SUCH POLICIES THERE WOULD BE MORE SYMPATHY FOR RENT CONTROL AMONGST THOSE NOT BENEFITING. I HAPPEN TO BELIEVE THAT UNTIL THE RENT BOARD STARTS DEVELOPING POLICIES THAT MAKE RENT CONTROLLED UNITS LESS OF A WINDFALL FOR AFFLUENT RENTERS AND THEREFORE MORE LIKELY TO BE VACATED AND THUS BECOME AVAILABLE TO THE FINANCIALLY WEAK THEY HAVE NO STANDING AS PROTECTORS OF THE FINANCIALLY WEAK.



V

SINCE A VACANT UNIT IS WORTH CONSIDERABLY MORE TO A TIC DEVELOPER THAN A TENATED UNIT IT IS LIKELY THAT SOME LANDLORDS WILL NOT RERENT UPON VACANCY IN THE HOPES OF TIC DEVELOPMENT. CAMBRIDGE, MASS. PROHIBITS THE HOLDING VACANT OF RENT CONTROLLED UNITS. SOME SIMILAR PROHIBITION OF VACANCY HOARDING SHOULD BE INTRODUCED IN BERKELEY, I BELIEVE.

COUPLED WITH A VACANCY PROHIBITION, I THINK, SHOULD BE A WAIVING OF THE 50% RULE FOR EVICTION IN TIC'S WHERE THE OWNER SEEKING EVICTION RESIDED IN THE UNIT BEFORE RENTING THE UNIT AND HAD AN ARRANGEMENT WITH HIS TENANT THAT THE TENANT WOULD LEAVE AFTER A CERTAIN DATE OR UPON DEMAND. (UNDER PRESENT LAW TIC OWNER'S WHO TEMPORARILY RENT THEIR UNITS CANNOT EVICT SO TIC UNITS WITHOUT RESIDENT OWNERS ARE LIKELY TO BE EMPTY)

5 unit building

March 10, 1989

I have not responded to your letter and bill for the City Sewer charges because I have not been sure how to respond. I have been trying to get information on the matter on the phone from both the City and EBMUD. Since that approach was less than satisfactory, I have written to both. Enclosed is a copy of the letter I sent to the City.

I am afraid that I must face the fact that I can no longer afford to keep the property. That is a very difficult decision to make since it has been in the family since 1936. As a matter of personal pride I am unwilling to allow the property to deteriorate. I understand that many owners simply do no maintenance as a way of compensating for the very low rents. That approach is not acceptable for me. You will recall that I had your entire apartment repainted before you moved in and we replaced the stove, refrigerator, kitchen counter, and sink.

In any case I will be listing the property for sale. We anticipate that the sale will be to a group of families who will each want to put their own student in each of the apartments. In a short time, you will receive a letter from the real estate company explaining the procedure. However I did want to inform you so that you will have as much time as possible to make plans for finding another place.

I am truly sorry that we have to do this. The expenses just are going up faster than the rents. The sewer service is just the last in a series. We will do everything we can to help you find another place (the real estate company indicated they did have listings), give you a reference, etc. We will keep you informed as soon as we hear from the City.

Sincerely,



VI      To MAKE RENTING PROPERTY IN BERKELEY  
SLIGHTLY MORE ATTRACTIVE THE RECAPTURE  
OF THE COST OF PROPERTY UPGRADING IN  
RENTS SHOULD BE MADE MORE CERTAIN.  
AT PRESENT IT IS UP TO THE SOMEWHAT  
WHIMSICAL DECISION OF AN EXAMINER WHETHER  
I, FOR EXAMPLE, CAN RECAPTURE THE COST  
OF REPLACING A BRICK FOUNDATION WITH  
CONCRETE. (AND EVEN IF AN EXAMINER DECIDES  
I CAN RECAPTURE, THE RECAPTURING IS SPREAD  
OVER MANY YEARS AT A TREASURY BILL  
INTEREST RATE.) BECAUSE OF THE UNCERTAINTY  
OF RECAPTURE AND THE CERTAINTY THAT ONE  
TENANT WILL OPPOSE RECAPTURE I AM  
MORE LIKELY TO FIND WAYS TO GET  
THE TENANT TO LEAVE. I SUGGEST THAT  
THE SUBCOMMITTEE SUGGEST TO CITY COUNCIL  
THAT THEY INSTRUCT THE RENT BOARD  
TO LOOK WITH FAVOUR ON LANDLORD EXPENDITURES  
FOR STRUCTURAL IMPROVEMENTS, AND THAT ANY  
REJECTION OF RECAPTURE FOR STRUCTURAL  
IMPROVEMENTS SHOULD BE DEFENDED BY THE  
EXAMINER TO CITY COUNCIL.

May 3, 1989

Dan Lambert  
Rent Stabilization Board  
City of Berkeley  
2100 Milvia  
Berkeley, CA

RECEIVED

MAY 09 1989

ADMINISTRATIVE SUPPORT UNIT  
RENT STABILIZATION PROGRAM

Dear Mr. Lambert:

Thank you for returning our phone call and for giving us such extended and valuable advice about our rental situation. Unfortunately neither of us can make it to the meeting today at 5:15, but we're more than happy to bring our case to the attention of the board if you think it will be helpful. With this in mind, and also so that you can appraise for yourself whether we have cause for either grievance or to fight our apparently upcoming eviction, we've decided to send you copies of all the letters from our landlord or the realtor that we still have copies of, and to give you a brief case history.

This whole thing started in February when we found out the Sewage Tax charge on our EBMUD bill was the responsibility of the landlady, and had been so for about a year. We wrote her two letters to this effect and finally received the enclosed reply dated March 10, in which she claims that she is having trouble getting information about this, and that anyway as a result she's decided to sell the building. As is also clearly stated in the letter, her stated intention (paragraph 3) is to sell the building as individual units, and that we will have to leave. She also intimates that the realtor will "assist" us in relocating.

Following this, the realtor, [REDACTED] began a slowly increasing barrage of phone calls, impromptu visits, and other irregular practices. On her first visit, which was announced by way of a note left under our hall door, she demanded that we give her keys to our apartment so that she could have ready access at any time. I told her I'd think about it, for at that time I had no idea of my rights as a tenant. She also asked me whether I was interested in buying my unit, and I told her I had no such plans.

Several days later, Ms. [REDACTED] called demanding keys. I told her I wouldn't give her copies, as I didn't want strangers in here when I wasn't around because I have valuables and a dog. I also told her that I wanted 24 hours notice anytime she was planning to show the house. She replied that I "have no choice", that I had to give her keys because it would be inconvenient otherwise, and that the 24-hour rule came with the condition



The building in which you live has been purchased. The closing date is 8 1 89.

On July 24 the building will be fumigated by Competition Termite. They will contact you, but it means that you and any possessions which are sensitive to their poisons need to be out of the building for a few days at that time. Possessions specifically include mattresses, most rugs, and anything that includes foam rubber!

What a nuisance.

However, there is another cloud with a mixed lining.

The buyers have between them a batch of more or less grown daughters that will need units, unfortunately including yours.

While this is not an eviction notice by any means==that can only be given by the buyers in proper form after they own the property, it is an early indication that it would be good to look for a new place to live.

I am also authorized to offer you \$1000 as a contribution toward your moving expenses by the buyers should you vacate your unit prior to their occupancy.

I am very sorry to disturb so, as you were so very courteous to us the other day. We will do our best to help you with a new place. I would be glad to sit down and discuss the situation with you at your convenience.

sincerely yours,

that I must make the house available at her convenience. I stood my ground and she backed down, saying we'd "see how it goes."

At none of the subsequent showings were we or any of the other tenants given 24 hours notice. Once a note appeared under my door saying "This is to confirm [my italics] that I will be showing your unit this afternoon..." - this after I had received no prior notice. Other times (including the showing to the ultimate purchaser) we received notes asking "as a special favor" if we would let the house be shown on shorter notice. We always complied with these requests, but it became clear that [REDACTED] had no intention whatsoever of ever giving us proper legal notice. These notes were always hand-written and unfortunately we didn't keep them. They also sent repairmen to work on our back porch without giving us any notice at all.

Furthermore, at every showing, the agent would ask us, with the potential buyer present, "When did you say you were planning on moving out?" - each expressed surprise and bewilderment when we told them that we had no intention of moving out and had never stated [REDACTED]

Several weeks ago we received the letter from [REDACTED] [REDACTED] As you can see, the letter informs us that, because of fumigation, we and all of our belongings will have to be out of the premises on July 24 "for several days." As you can also see, there is no mention of relocation benefits or recompense for this vacancy, despite the obvious fact that it would entail considerable time and trouble on our part. The implication seems to be that we simply have to clear out at their command.

Later on in the letter we are told that we will be evicted, as the "buyers" have "several more or less grown children" who will need units, "unfortunately including yours." The realtor is careful to point out that this is not an "official" notice, although it seems to amount to the same thing. Finally, we're offered \$1000 to get out before the closing. No mention is made of our landlady's offer to assist us in relocating.

We decided to weigh our options before responding to this document. We spoke to people at the rent board, to friends who had had similar experiences, and to the other tenants in the building. Before we had a chance to figure out what to do, [REDACTED] called us and pressed us for a response. We were noncommittal, but during the course of the conversation, Ms. [REDACTED] stated the following: 1) She was unsure of the laws regarding relocation benefits for fumigation, but that she was pretty sure that the owner's responsibility was "limited". She also said we didn't have to move our belongings out "if you don't mind them being destroyed." 2) The



"buyers" children are not all adults, but that that doesn't matter. 3) That we had no choice in the matter, that their offer was "either get the money now or get a 30 day notice in August." I responded that the \$1000 seemed low, and she said that there "may be" another \$1000 as well, but she made no promises. With that, the conversation ended.

Two days later Ms. [REDACTED] left under our door a copy of the 1982 Rent Control Statute, with no comment but with two passages underlined - the first being an excerpt (7A) from the section regarding good cause for eviction, the second being paragraph 9 from that same section. The implication was that they had a perfect right to evict us, although as I said she made no comment.

Anyhow, that's how things stand as of today. Not ever having had to deal with this before, and not being legal or real estate experts, we're not sure what to make of our landlady's or Ms. [REDACTED] actions: it's hard to know if what they've been doing is legal, quasi-legal, normal, or blatantly irregular. In any case, a lot of things seem borderline harassment. Our impression is that Ms. [REDACTED] is very aware of the letter of the law and that she is very carefully testing the water, seeing what she can get away with and what she can't, covering her tracks as is necessary. I say this because her treatment of each tenant differs. This is a 5 unit building. One unit is vacant. One unit is sublet, and the occupant has had literally no contact with either landlady or realtor. One unit is occupied by an acquaintance of the landlady, and she has unofficially been "asked" to vacate "so as not to hinder the sale". The other tenant besides us has been told to vacate by mid-May for "fumigation" (She is ignoring the eviction for obvious reasons). We are the only tenants who have been offered recompense, meager as it is. This fact alone makes us question the good faith of the owner and the landlady.

We do not want to move. The neighborhood is good, close to my work (I am an employee of the university), our dog can play in the yard (we got the dog after moving in here, with the approval of the landlady). It will be difficult to find a place that accepts pets and is in a comparable price range. If we are forced to move, obviously, we would like to be adequately compensated. And the landlady did promise to "assist" us as is documented by the March 10 letter. We'll get in touch with you to ask if this information is helpful to you, and also to solicit any further advice you may have. Thanks for all your help - we really appreciate and need the work the Rent Board does.

Sincerely,

ST. JOHN & ASSOCIATES

Property Management Consultants  
2107 West Street  
Berkeley, CA 94702  
(415) 845-8928

February 23, 1990

Stephen Barton  
Program Planning Dept.  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

RECEIVED

MAR 1 - 1990

PROGRAM PLANNING,  
MANAGEMENT & BUDGET

Re: TIC Subcommittee

Dear Mr. Barton:

I have at hand your memorandum of February 14, 1990 regarding the January 16 subcommittee meeting. I would like to comment on your characterization that "Owners who hope to sell to TIC owner-occupants are emptying out buildings through a combination of...and harassment." Harassment, as you know, has become a term surrounded with political overtones. Like "diversity", "gentrification", and "environmental protection", "harassment" has political connotations beyond its direct meaning. The use of the term in an otherwise factual document in my opinion detracts from your memorandum's credibility.

While I recognize that there have been allegations of harassment, I believe those allegations will fall apart when examined individually. Berkeley tenants are very well protected against both harassment and unlawful eviction. It is at an owner's very considerable peril that he or she follow any practices that could be characterized as harassment of tenants. You correctly state that "the extent of harassment is impossible to determine". I believe we can go further. Using a keen understanding of the complex of landlord-tenant laws as they apply in Berkeley, I think we can say that harassment in Berkeley is not feasible.

By this I don't mean to say that there are not disputes between owner and tenant. What I mean to say is that effective harassment by an owner places that owner in such enormous jeopardy that it cannot be deemed serious provocation against the tenant. Any tenant who is actually harassed by an owner has very effective remedies at law. While there may be some owners who don't recognize the situation and do pursue practices which could be deemed harassment, all a tenant has to do to correct the situation is hire a legal representative to write a few well-worded letters to the owner. If some stubborn owner failed to stop the alleged harassment, that tenant would then be in a position to sue the owner for enormous sums of money to his or her major financial advantage.

Harassment by tenants of owners, on the other hand, is, in effect, protected by law in Berkeley. There are any number of programs of action which tenants can undertake which could be




deemed "harassment" of owners, which subject the tenant to little or no risk of effective countermeasures. Tenants can (and do) harass owners through frivolous requests for repairs, combined with denials of entry. Tenants can (and do) harass owners by dragging them through lengthy and enormously expensive Rent Board proceedings on topics of minor importance. Tenants can (and do) harass owners through repeated requests for inspections by the City of Berkeley for minor repairs which could be handled in a more informal way at enormous saving in cost, time and trouble. Tenants can (and do) harass owners by unlawfully assigning and subletting units, so that owners never have vacant possession, even after the departure of the tenants who signed the rental agreement. Owners' remedies against tenants, unlike tenants' remedies against owners, are impractical to pursue.

My point in making this communication to you is not to complain that tenants sometimes harass owners, but rather to urge you not to use the word "harassment" loosely in describing methods by which vacant possession is achieved. I believe that harassment in eviction contexts is rare, and that it is already well-protected by law and requires no further intervention by the City of Berkeley. If there are a few cases involving elements of harassment, there are hundreds of cases wherein the tenant who leaves a unit at the request of the owner is absolutely delighted with the outcome. In many cases tenants utilize the "golden handshake" to purchase homes or tenants-in-common interests. These tenants are then able, because of the opportunity to accept buyout offers, to enter the real estate market as owner-occupants. This is a substantial benefit to Berkeley tenants. It is a benefit which control of tenants-in-common sales would limit or foreclose. It should not be deemed "harassment".

There is much more in your memorandum on which I would like to comment, but I will reserve those comments for a later date. For now, let me simply encourage you and members of the planning commission and its subcommittee to refrain to the extent feasible from using vague and inflammatory terminology which does not reflect the actual legal and regulatory situation.

Sincerely,

ST. JOHN & ASSOCIATES



Michael St. John  
Consultant

cc: Denise Pinkston, Planning Commission  
Dave Davis, Planning Commission  
Stuart Gardiner, Planning Commission  
Carollee Peterson, Planning Commission  
Shirley Dean, City Council

19sb223

Mr. Allen Goldfarb  
Berkeley City Council  
2180 Milvia Street  
Berkeley, California  
94704

January 8, 1990

Regards: Conversion of Rental Units  
to T.I.C. Owner Occupied  
Units in Berkeley.

Dear Mr Goldfarb:

We are long time rental tenants of Normandy Village, an eight (8) unit building on Spruce Street in Berkeley, who have been served with six month eviction notices by the current owner.

The owners have already marketed two of the units in the building as TIC sales so it is obvious the owner intends to vacate the remaining six tenant units in order to sell them.

We are a moderate income family who have lived in our apartment for 12 years, my wife is pregnant with our first baby, due in mid-April, and we presently have no place to move to.

Facing a relocation at this time presents a hardship for us and we find it hard to believe that after all the years and measures taken to preserve the rental/owner mix and the character of the city of Berkeley, that this TIC loophole threatens to collapse this mix overnight.

Of the six remaining tenants, most have expressed a desire to stay on as continuing rent tenants. As an example:

Cecile Earle in unit 1843 has been a tenant since 1977. (12 - 13yrs.)


Joe Sanders in unit 1849 has occupied her unit for 15 years.

Susan Subtle has rented unit 1849 since 1969, 21 years.

Unless some measures are undertaken to control or reasonably limit these TIC conversions, it is forecastable that all landlords in Berkeley would put there units up for sale at these speculatively exorbitant prices and lower income families, students, even middle income citizens would be forced out.

I would appreciate some response from you on this matter.

James F. Baird & Jill Baird



1841 Spruce Street Berk., Ca 94709 Ph. 845-4045 - City Council

cc: Mayor Handcock  
City Planning Commission



# CITY OF BERKELEY

---

*Alan Goldfarb*

COUNCILMEMBER  
DISTRICT 6

RECEIVED

JAN 17 1990

ADMINISTRATIVE SUPPORT UNIT  
RENT STABILIZATION PROGRAM

January 16, 1990

Joe Brooks, Director  
Rent Stabilization Board  
2180 Milvia St.  
Berkeley, CA 94704

Dear Mr. Brooks:

Enclosed is a letter from Mr. and Mrs. James F. Baird, who indicate they have been served with an eviction notice because their landlord wants to sell their unit under a "Tenants in Common" arrangement.

I would greatly appreciate your letting me know whether they can be evicted under these circumstances and, if so, what their rights are in the matter.

Sincerely,



cc: James F. Baird and Jill Baird  
1841 Spruce St.  
Berkeley, CA 94709



# City of Berkeley



Rent Stabilization Board

2100 Milvia Street

Berkeley, California 94704

Telecommunications Device for the Deaf (415) 644-6915

(415) 644-6128

January 30, 1990

Alan Goldfarb, Councilmember  
MLK, Jr. Civic Center  
2100 Milvia Street  
Berkeley, CA 94704

Dear Mr. Goldfarb:

This letter is to confirm the information provided your aide Carol Wong by my Special Assistant Dan Lambert regarding the eviction of four long term tenants for a Tenants-in-Common (TIC) conversion at Normandy Village. We share Mr. Baird's concern of the impact of the marketing of TICS on the population and on affordable housing in Berkeley.

In short, the legal situation is that, unless the Council takes action to regulate TICs, these owners, if they follow proper procedures, are apparently entitled to evict under state law. The fact that the four households have a collective sixty years of residency in their homes currently has no legal impact on the situation.

The letter from James F. Baird states that the owner has already marketed two of the units in the building as TIC sales and that his family has been served with "six month eviction notices". Your letter asks if they can be evicted under these circumstances and, if so, what their rights are.

My Assistant tried to reach the Bairds directly to get more information on the situation, but they are currently out of town.

The owner is evicting under the "Ellis" act that permits landlords to evict 'to go out of business'. Under local ordinance passed to mitigate harmful effects of such evictions, owners are required to give six months notice to vacate rather than the usual thirty days and also to comply with certain registration requirements. The owners have filed the registration forms.

Enclosed is a summary of the requirements prepared by the City Attorney's office.



January 30, 1990, p.2

Owners are also required to pay \$4500 per unit in relocation/displacement payments. Although the Superior Court had tentatively struck down this requirement as part of a summary judgement, the City Attorney prevailed in getting the Court to reconsider and reverse this ruling. While the issue will be litigated more extensively, the relocation payment requirement is currently in effect.

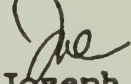
Other than the special requirements associated with "Ellis" evictions, the eviction process is the same as others. If the residents do not move once the six months have expired, the owner must file an unlawful detainer suit in Court and prove his case at trial.

The enclosed eviction brochure explains the process in more detail.

Please, feel free to contact us with any further concerns.

We would also be glad to provide information directly to the Bairds and any of the other tenants. Perhaps your office would like to set up a meeting with them to discuss their rights as well as to explore their request for measures to control TIC conversions.

Sincerely,

  
Joseph F. Brooks,  
Executive Director

Enc.: Ellis summary  
Eviction Brochure

ST. JOHN & ASSOCIATES

Property Management Consultants  
2107 West Street  
Berkeley, CA 94702  
(415) 845-8928

RECEIVED  
MAR 5 - 1990  
PROGRAM PLANNING,  
MANAGEMENT & BUDGET

February 26, 1990

Stephen Barton  
Dept. of Program Planning  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Re: Tenants-in-Common Sales

Dear Steve:

As I think over our recent phone conversation, it seems to me that you were somewhat impressed by the letter from tenants James and Jill Baird, who are being asked to leave Normandy Village (see enclosed letters). The Bairds find that relocation is a hardship and presumably believe that the \$4,500 relocation fee does not sufficiently compensate them. Further, the Bairds say that of the six remaining tenants, "most have expressed a desire to stay on". Since folks tend to exaggerate in these communications, let's say that 3 of the 6 believe the \$4,500 is insufficient compensation for having to move. If this is so, you have 4 parties who are unhappy.

But on the other side of the equation, we have 4 other tenants who presumably were happy to take the \$4,500 and leave. In addition, there is the owner, who certainly is happy at being able to market his property, heretofore caught by rent control with rents that don't support his costs or allow a return on his investment. Further, there are, or will be, eight new owner-occupants who will be delighted to have found affordable housing in Berkeley.

So we have a total of 13 parties who favor the entire arrangement and 4 parties who do not favor it. The arrangement is protected by State law. Why should Berkeley violate the clear intent of State law in order to protect the rights of 4 citizens over the rights of 13 citizens?

The purpose of the rent control law is said to be to maintain the diversity of the Berkeley community and to advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged. I note that Baird identifies himself as "moderate income" and makes no comment about the income level of any of the other tenants. In addition, Mr. Baird does not identify any of the tenants who desire to stay as minorities, students, handicapped, or the aged,



an omission which strongly suggests that none of these groups are represented. My tentative conclusion is that none of the tenants desiring to retain their rent control subsidy are those tenants the rent law was designed to protect. If it is true that none are students, one might ask why non-students should be protected in their efforts to continue to occupy student housing when 40% fewer students are able to live in Berkeley than at the beginning of Berkeley's experiment with rent control?

Finally, as you know, Mr. Baird is wrong on several facts. Tenants-in-common units are not sold at "speculatively exorbitant prices" - they are sold at prices far below the prices at which single-family homes and condominiums change hands today. TIC shares are widely thought of as Berkeley's affordable housing for those who prefer to own. Mr. Baird fears that "middle income citizens would be forced out", but it is "middle income citizens" who commonly purchase TIC shares. As to his claim that students are being forced out, I note that none of the current tenants are students and that many TIC purchasers are students.

As always, it is a pleasure to think through these questions with you. Thanks for your excellent staff work for the planning commission.

Sincerely,

ST. JOHN & ASSOCIATES

Michael St. John  
Consultant

Enclosures  
cc: Allan Goldfarb  
Shirley Dean  
Joseph Brooks  
19sbt226



# TIC Committee Gets An Earful

□ Complexities of city housing policy remain unresolved after a long debate

By Julie Freestone

The Voice

Tenancy-in-common, a '60s form of home ownership, was debated intensely on Tuesday as a subcommittee of the Planning Commission considered regulation or control of TICs.

Over 100 angry residents, many of them TIC owners and realtors, heard the three-member subcommittee discuss problems that may be caused by TICs and regulations that might be enacted to solve them — including a ban on TIC sales and a mandatory disclosure statement at the time of sale.

TICs, which some critics say were created to circumvent Berkeley's ban on condominium conversion, are a condo-like form of joint ownership involving more than one unit.

But TIC owners have no legal right to specific portions of the property they co-own. Typically, a separate agreement between owners will outline terms and conditions of the arrangement.

Critics of Berkeley housing policy say that TICs have become a popular form of ownership because owners of rental property in the city cannot deal with the rent control ordinance and are instead selling their properties as separate TIC units.

Proponents of TIC regulation say that the joint ownership approach is dislocating poorer tenants and destroying the city's ethnic and social diversity.

In two public comment periods before and after the subcommittee's discussion, residents trooped to the mike to attack the proposed regulations.

"This ban you are proposing on TICs," one of the last speakers said, "will be a ban on any joint ownership involving anyone wanting to buy any commercial investment property with no plans to occupy it."

Although the committee had

already debated the issue for several hours at a previous meeting, it seemed chagrined by this comment.

"How do you *not* ban it for commercial property," commented committee chair Denise Pinkston, "but do ban it when

it's an exclusive right to occupy (which becomes a subdivision) — (that) is a good question."

Many of the speakers called on the subcommittee to deal with the real cause of the problem, not the symptoms.

"TICs are a symptom," one man said. "The reason we have TICs is because of rent control and the condo conversion ban."

"After watching the events in Eastern Europe," one woman said, "we see that central planning doesn't work. Socialism is not going to work here. Don't regulate this. Let the market take its course."

Several UC-Berkeley graduates explained that TICs provided the only way in which former students could remain in Berkeley and get into the housing market.

Responding to charges that TICs cause housing shortages, one TIC owner said, "I fail to see how owning a unit instead of renting one makes for a housing shortage."

Waving a copy of *The Cities' Wealth* (a book written over a decade ago by Mayor Loni Hancock and other current city policymakers) one speaker said, "I know them. I worked with them in the '70s. I was part of their cell. They want to take from our tax base. TICs are only one issue."

"The issue of TICs is a fly on the wall," said Ted Edlin. "The bureaucracy has been so oppressive to owners. The reason people are doing TICs is because you don't allow other courses (of action)."

Number of speakers appealed to the committee to listen to the "will of the community," but not everyone spoke in favor of the TIC concept.

Greta Mueller, representing seniors, expressed the concern that seniors have and will suffer because of displacement from TICs. "Seniors," she predicted, "will become homeless."

Sam Trossow, speaking for the East Bay Tenants Bar Association, said, "If you people who bought TICs don't think you've bought a subdivision (which is illegal in Berkeley) you're kidding yourself."

"You're putting a lot of your life in a legal fiction," Trossow continued. "They look like subdivisions, they act like subdivisions. They should be treated like them."

Trossow accused Berkeley realtors of having a "lynch mob mentality" about the subcommittee.

The subcommittee, which included Pinkston, Dave Davis and Stuart Gardiner, discussed four major problems: whether TICs reduce the supply of affordable rental housing and reduce economic/racial diversity; whether tenants were being evicted, displaced, or misled because of TICs; if buyers were ignorant of potential problems related to TICs; and whether TIC marketing was conducted in a discriminatory manner.

In most instances, the subcommittee decided it had no information on which to make a decision, directing staffer Steve Barton to obtain missing data.

Regarding the question of discriminatory marketing (said to focus on university students and exclude others) the committee decided without apparent information that there was no problem.

Although it had decided earlier to recommend to the Planning Commission that a disclosure statement be required in all TIC sales, the subcommittee reopened the discussion of buyer protection.

"It's paternalistic," said Gardiner.

"I've heard about existing state laws that cover this," Davis said. "I don't think the city should duplicate that, but conditions in Berkeley are different. I don't think it hurts buyers to be informed."



11. Pinkston tried to reassure the  
12 audience that whatever happened,  
existing TIC owners would not be  
2 affected because they would be  
3 "grandfathered" in.

4 But Barton disagreed, saying  
5 that disclosure requirements  
6 would apply to future sales of  
TICs.

7 Pinkston did emphasize that it  
8 was the intention of the subcom-  
9 mittee not to impact existing TIC  
owners.

10 Gardiner, injecting a note of  
11 levity, asked, "Why are we  
12 choosing this form of ownership  
13 to regulate? Maybe we should  
14 develop one for anyone buying  
15 any property in Berkeley!"

16 In discussing whether to ban  
17 TICs when they involve five or  
18 more units, Pinkston said,  
19 "Clearly it is a violation of the  
20 city's condo conversion  
prohibition."

21 "Is it?" asked Gardiner, ad-  
22 ding that he didn't want to "re-  
23 litigate" the two court cases  
24 which had found TIC conversion  
25 not in violation of the ban on con-  
do conversion.

26 The committee agreed that it  
lacked sufficient information for  
a coherent decision.

27 "Maybe we want to increase  
28 TICs and ease the restrictions on  
29 condo conversion," offered  
30 Davis. "We need information to  
do trend analysis."

31 "That's what people in the real  
estate market do," Davis con-  
tinued. "They don't go out and  
ask people if they're unhappy."

32 The evening was dominated by  
the issues of whether TICs interfere  
with Berkeley's policy of protect-  
ing affordable housing, whether  
rent control could be set aside as a  
separate issue, and whether the  
TIC issue should be debated at all  
if the magnitude of the problem  
— currently not accurately  
measured — turns out to be  
small.

33 In the end, the subcommittee  
took no action, but agreed to con-

34 tinue discussing whether or not  
there should be a ban, ~~what~~  
number of units might be includ-  
ed in such a ban, whether tenants  
should be allowed the right of  
first refusal or discounts in TIC  
purchases, and whether there  
should be a quota on annual TIC  
conversions.



# TIC Talk Goes On Without Planners

By Julie Freestone

The Voice

Berkeley  
Voice  
3-1-90

The city's Tenants-In-Common (TIC) Planning Commission subcommittee cancelled its meeting last week, but the show went on anyway.

The meeting at the North Berkeley Senior Citizens Center was supposed to continue to explore whether the city should regulate sale of Tenants-In-Common property — an arrangement that lists multiple owners for multiple-unit property, but provides for private agreements among the owners for "ownership" of individual units.

## Tenants-In-Common...

Continued from front page

Over a dozen residents, led by George Oram of Elmwood Realty, reviewed a memo prepared for the subcommittee by staff aide Steve Barton and discussed strategy.

In explaining why the committee meeting was cancelled, Oram said Barton was "embarrassed and chagrined" that the committee had cancelled the meeting.

Oram said a Planning Commission member told him that members of the Tenants-In-Common subcommittee wanted to return the issue to the full commission because "it was a horse they didn't want to ride."

TIC subcommittee Chairperson Denise Pinkston said the meeting was cancelled to give Barton more time to gather information needed for discussion.

Property owner advocate Michael St. John said he had also asked Barton why the subcommittee meeting was cancelled.

"He said that I'd have to ask Denise Pinkston," St. John said.

St. John said that as he was putting down the phone, Barton offered his personal opinion that the TIC subcommittee didn't want two hot topics to be discussed by the community in one week. (The night after the TIC meeting,

the Rent Stabilization Board was scheduled to debate the issue of historically low rents.)

When asked if he had made such a statement, Barton said, "No comment."

Referring to the previous TIC meeting on Jan. 16, which drew over 100 people and included a public hearing, Oram said, "We have won some sort of political battle by showing up as strong as we have, but the issue won't go away."

"It will go away until after the election," Oram added. "The BCA will be fighting for their lives, but if they win, we'll be back here because they'll have a fresh mandate."

One of the issues being debated is the question of whether the city should ban the conversion of rental units to Tenants-In-Common arrangements or regulate those "conversions."

In the memorandum prepared by Barton for the subcommittee, several forms of regulation are discussed, including purchase of a permit, a cap on the number of conversions allowed each year, and mandatory disclosure requirements to buyers.

The fee for the permit could be relatively modest (to cover only the cost of the administrative pro-

cess related to regulation) or it could be considerable, with the funds raised used to build low-income housing.

In an interview, Barton discussed the permit issue and whether it could be challenged in court.

"We haven't gotten a formal ruling from the city," Barton said, "but tentatively, it looks like it is legal."

Emphasizing that he wrote the memo about permits to show the city what was possible if they wanted to move toward regulation, Barton said that the higher fee to raise funds for low income housing "isn't currently on the agenda. You would need then to create a mechanism for how that housing would be accomplished."

Barton also pointed out that regulation of TICs would not solve the problem of lack of affordable housing.

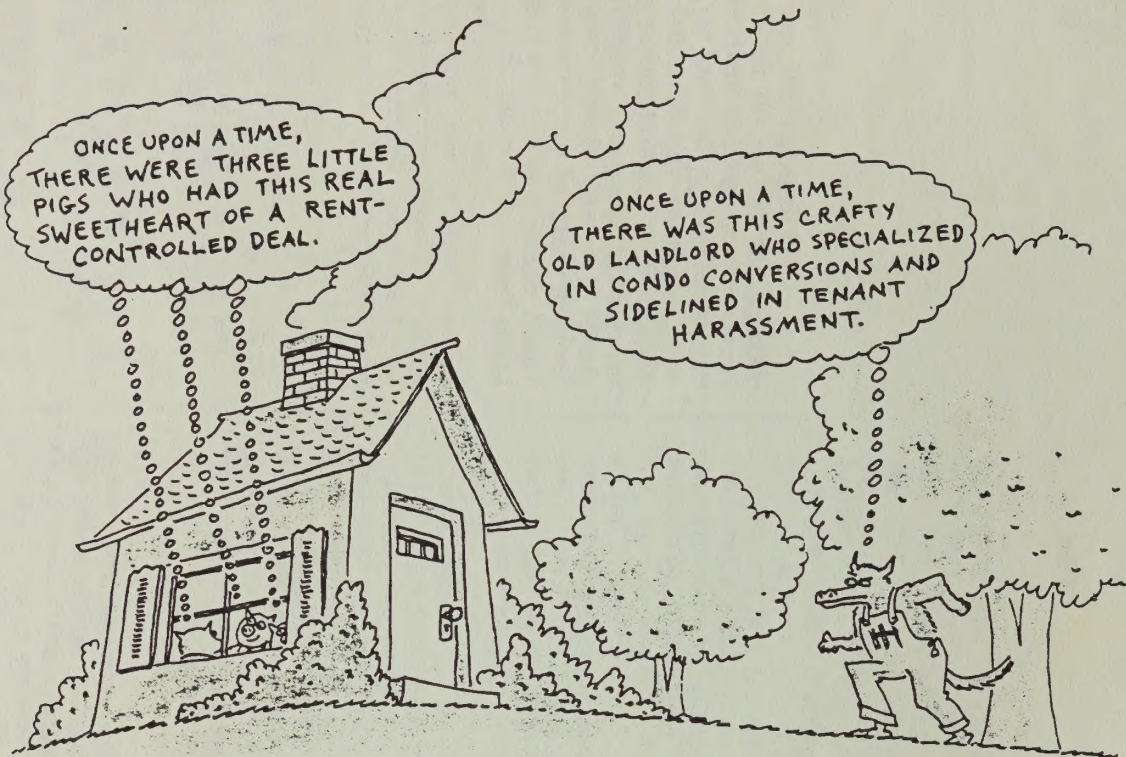
"The Planning Commission could establish a new subcommittee or some other vehicle to examine the whole question of loss of affordable rental units," Barton's memo said.

"Regardless of what is decided on TICs, this issue will not be fully dealt with...a very open examination of possible new housing policies seems called for," he concluded.

Although Oram praised Barton for hard work and conscientiousness, he and others called for TIC advocates to take a strong stand.

"We must take to the streets, speak out — that's how the BCA did it when they were ascending to power," said one owner. "We have to step out of our middle-class shoes and our polite liberalism."





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Tenancy in common: The tenancy of those who hold land or other property in common

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